

HYDROGEN FUEL INCENTIVES AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill creates incentives for the production and use of hydrogen fuel.

Highlighted Provisions:

This bill:

- ▶ expands the uses of money in the Permanent Community Impact Fund by defining "throughput infrastructure project" to include the production of generators that use hydrogen fuel cells;
- ▶ creates refundable corporate and individual tax credits for certain hydrogen fuel cells and hydrogen production from certain renewable resources;
- ▶ provides a process for a lessee of a renewable energy system, a hydrogen fuel cell, or a hydrogen production system income tax credit to obtain a written certification;
- ▶ modifies sales and use tax definitions to:
 - add hydrogen to the list of fuels that are subject to a lower sales and use tax rate if for industrial use or residential use;
 - extend the sales and use tax exemption for sales of electricity made under a Public Service Commission tariff to include electricity produced with a hydrogen fuel cell; and
 - exempt sales of electricity made under a Public Service Commission tariff to exclude electricity produced with a hydrogen fuel cell from municipal energy tax;
- ▶ eliminates the special fuel excise tax on hydrogen;
- ▶ defines "infrastructure" to include hydrogen fuel production or distribution projects for purposes of qualifying for a high cost infrastructure development tax credit; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

33 This bill provides a special effective date.

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **35A-8-302**, as last amended by Laws of Utah 2019, Chapter 501

37 **59-7-614**, as last amended by Laws of Utah 2019, Chapter 247

38 **59-10-1106**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 1

39 **59-12-102**, as last amended by Laws of Utah 2020, Chapters 354, 365, and 438

40 **59-12-103**, as last amended by Laws of Utah 2020, Fifth Special Session, Chapter 20

41 **59-13-102**, as last amended by Laws of Utah 2015, Chapter 275

42 **59-13-301**, as last amended by Laws of Utah 2019, Chapter 479

43 **63M-4-502**, as enacted by Laws of Utah 2012, Chapter 410

44 **63M-4-602**, as last amended by Laws of Utah 2019, Chapter 501

45

46 *Be it enacted by the Legislature of the state of Utah:*

47 Section 1. Section **35A-8-302** is amended to read:

48 **35A-8-302. Definitions.**

49 As used in this part:

50 (1) "Bonus payments" means that portion of the bonus payments received by the
51 United States government under the Leasing Act paid to the state under Section 35 of the
52 Leasing Act, 30 U.S.C. Sec. 191, together with any interest that had accrued on those
53 payments.

54 (2) "Impact board" means the Permanent Community Impact Fund Board created under
55 Section 35A-8-304.

56 (3) "Impact fund" means the Permanent Community Impact Fund established by this
57 chapter.

58 (4) "Interlocal agency" means a legal or administrative entity created by a subdivision
59 or combination of subdivisions under the authority of Title 11, Chapter 13, Interlocal
60 Cooperation Act.

61 (5) "Leasing Act" means the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 181 et
62 seq.

63 (6) "Qualifying sales and use tax distribution reduction" means that, for the calendar

year beginning on January 1, 2008, the total sales and use tax distributions a city received under Section 59-12-205 were reduced by at least 15% from the total sales and use tax distributions the city received under Section 59-12-205 for the calendar year beginning on January 1, 2007.

(7) "Subdivision" means a county, city, town, county service area, special service district, special improvement district, water conservancy district, water improvement district, sewer improvement district, housing authority, building authority, school district, or public postsecondary institution organized under the laws of this state.

(8) (a) "Throughput infrastructure project" means the following facilities, whether located within, partially within, or outside of the state:

(i) a bulk commodities ocean terminal;

(ii) a pipeline for the transportation of liquid or gaseous hydrocarbons;

(iii) electric transmission lines and ancillary facilities;

(iv) a shortline freight railroad and ancillary facilities;

(v) a plant or facility for storing, distributing, or producing hydrogen, including the liquification of hydrogen, for use as a fuel in zero emission motor vehicles, for electricity generation, or for industrial use; or

(vi) a plant for the production of zero emission hydrogen fueled trucks or generators that use hydrogen fuel cells, including battery electric vehicle charging systems that use hydrogen fuel cells.

(b) "Throughput infrastructure project" includes:

(i) an ownership interest or a joint or undivided ownership interest in a facility;

(ii) a membership interest in the owner of a facility; or

(iii) a contractual right, whether secured or unsecured, to use all or a portion of the throughput, transportation, or transmission capacity of a facility.

Section 2. Section **59-7-614** is amended to read:

59-7-614. Renewable energy systems tax credits -- Definitions -- Certification -- Rulemaking authority.

(1) As used in this section:

(a) (i) "Active solar system" means a system of equipment that is capable of:

(A) collecting and converting incident solar radiation into thermal, mechanical, or

95 electrical energy; and

96 (B) transferring a form of energy described in Subsection (1)(a)(i)(A) by a separate
97 apparatus to storage or to the point of use.

98 (ii) "Active solar system" includes water heating, space heating or cooling, and
99 electrical or mechanical energy generation.

100 (b) "Air quality control region" means an area within the state designated as an air
101 quality control region in accordance with the Clean Air Act, 42 U.S.C. Sec. 7407.

102 [~~(b)~~] (c) "Biomass system" means a system of apparatus and equipment for use in:

103 (i) converting material into biomass energy, as defined in Section 59-12-102; and

104 (ii) transporting the biomass energy by separate apparatus to the point of use or storage.

105 [~~(c)~~] (d) "Commercial energy system" means a system that is:

106 (i) (A) an active solar system;

107 (B) a biomass system;

108 (C) a direct use geothermal system;

109 (D) a geothermal electricity system;

110 (E) a geothermal heat pump system;

111 (F) a hydroenergy system;

112 (G) a passive solar system; or

113 (H) a wind system;

114 (ii) located in the state; and

115 (iii) used:

116 (A) to supply energy to a commercial unit; or

117 (B) as a commercial enterprise.

118 [~~(d)~~] (e) "Commercial enterprise" means an entity, the purpose of which is to produce;

119 (i) electrical, mechanical, or thermal energy for sale from a commercial energy system;

120 or

121 (ii) hydrogen for sale from a hydrogen production system.

122 [~~(e)~~] (f) (i) "Commercial unit" means a building or structure that an entity uses to
123 transact business.

124 (ii) Notwithstanding Subsection [~~(1)(e)(i)~~] (1)(f)(i):

125 (A) with respect to an active solar system used for agricultural water pumping or a

126 wind system, each individual energy generating device is considered to be a commercial unit;
127 or

128 (B) if an energy system is the building or structure that an entity uses to transact
129 business, a commercial unit is the complete energy system itself.

130 ~~[(f)]~~ (g) "Direct use geothermal system" means a system of apparatus and equipment
131 that enables the direct use of geothermal energy to meet energy needs, including heating a
132 building, an industrial process, and aquaculture.

133 (h) "Fuel cell" means any electrochemical device and any accompanying system
134 components that:

135 (i) react hydrogen with oxygen to produce electricity; and

136 (ii) produce zero emissions of carbon dioxide, nitrides of oxygen, or sulfides of
137 oxygen.

138 ~~[(g)]~~ (i) "Geothermal electricity" means energy that is:

139 (i) contained in heat that continuously flows outward from the earth; and

140 (ii) used as a sole source of energy to produce electricity.

141 ~~[(h)]~~ (j) "Geothermal energy" means energy generated by heat that is contained in the
142 earth.

143 ~~[(i)]~~ (k) "Geothermal heat pump system" means a system of apparatus and equipment
144 that:

145 (i) enables the use of thermal properties contained in the earth at temperatures well
146 below 100 degrees Fahrenheit; and

147 (ii) helps meet heating and cooling needs of a structure.

148 ~~[(j)]~~ (l) "Hydroenergy system" means a system of apparatus and equipment that is
149 capable of:

150 (i) intercepting and converting kinetic water energy into electrical or mechanical
151 energy; and

152 (ii) transferring this form of energy by separate apparatus to the point of use or storage.

153 (m) "Hydrogen production system" means a system of apparatus and equipment
154 that uses:

155 (i) electricity from a renewable energy source to create hydrogen gas from water,

156 regardless of whether the renewable energy source is at a separate facility or the same facility

157 as the system of apparatus and equipment; or

158 (ii) uses renewable natural gas to produce hydrogen gas.

159 (n) "Nonattainment status" means a designation of nonattainment under the Clean Air
160 Act, 42 U.S.C. Sec. 7407(d)(1)(A)(i), for one or more pollutants for which there are national
161 ambient air quality standards established under 42 U.S.C. Sec. 7409.

162 ~~[(*)]~~ (o) "Office" means the Office of Energy Development created in Section
163 63M-4-401.

164 ~~[(*)]~~ (p) (i) "Passive solar system" means a direct thermal system that utilizes the
165 structure of a building and ~~[its]~~ the structure's operable components to provide for collection,
166 storage, and distribution of heating or cooling during the appropriate times of the year by
167 utilizing the climate resources available at the site.

168 (ii) "Passive solar system" includes those portions and components of a building that
169 are expressly designed and required for the collection, storage, and distribution of solar energy.

170 ~~[(*)]~~ (q) "Photovoltaic system" means an active solar system that generates electricity
171 from sunlight.

172 ~~[(*)]~~ (r) (i) "Principal recovery portion" means the portion of a lease payment that
173 constitutes the cost a person incurs in acquiring a commercial energy system.

174 (ii) "Principal recovery portion" does not include:

175 (A) an interest charge; or

176 (B) a maintenance expense.

177 (s) "Renewable energy source" means the same as that term is defined in Section
178 54-17-601.

179 ~~[(*)]~~ (t) "Residential energy system" means the following used to supply energy to or
180 for a residential unit:

181 (i) an active solar system;

182 (ii) a biomass system;

183 (iii) a direct use geothermal system;

184 (iv) a geothermal heat pump system;

185 (v) a hydroenergy system;

186 (vi) a passive solar system; or

187 (vii) a wind system.

188 ~~[(p)]~~ (u) (i) "Residential unit" means a house, condominium, apartment, or similar
189 dwelling unit that:

190 (A) is located in the state; and

191 (B) serves as a dwelling for a person, group of persons, or a family.

192 (ii) "Residential unit" does not include property subject to a fee under:

193 (A) Section 59-2-405;

194 (B) Section 59-2-405.1;

195 (C) Section 59-2-405.2;

196 (D) Section 59-2-405.3; or

197 (E) Section 72-10-110.5.

198 ~~[(q)]~~ (v) "Wind system" means a system of apparatus and equipment that is capable of:

199 (i) intercepting and converting wind energy into mechanical or electrical energy; and

200 (ii) transferring these forms of energy by a separate apparatus to the point of use, sale,
201 or storage.

202 (2) A taxpayer may claim an energy system tax credit as provided in this section
203 against a tax due under this chapter for a taxable year.

204 (3) (a) Subject to the other provisions of this Subsection (3), a taxpayer may claim a
205 nonrefundable tax credit under this Subsection (3) with respect to a residential unit the taxpayer
206 owns or uses if:

207 (i) the taxpayer:

208 (A) purchases and completes a residential energy system to supply all or part of the
209 energy required for the residential unit; or

210 (B) participates in the financing of a residential energy system to supply all or part of
211 the energy required for the residential unit; and

212 ~~[(ii) the residential energy system is completed and placed in service on or after~~
213 ~~January 1, 2007; and]~~

214 ~~[(iii)]~~ (ii) the taxpayer obtains a written certification from the office in accordance with
215 Subsection ~~[(7)]~~ (8).

216 (b) (i) Subject to Subsections (3)(b)(ii) through (iv) and, as applicable, Subsection
217 (3)(c) or (d), the tax credit is equal to 25% of the reasonable costs of each residential energy
218 system installed with respect to each residential unit the taxpayer owns or uses.

(ii) A tax credit under this Subsection (3) may include installation costs.

(iii) A taxpayer may claim a tax credit under this Subsection (3) for the taxable year in which the residential energy system is completed and placed in service.

(iv) If the amount of a tax credit under this Subsection (3) exceeds a taxpayer's tax liability under this chapter for a taxable year, the taxpayer may carry forward the amount of the tax credit exceeding the liability [~~may be carried forward~~] for a period that does not exceed the next four taxable years.

(c) The total amount of tax credit a taxpayer may claim under this Subsection (3) for a residential energy system, other than a photovoltaic system, may not exceed \$2,000 per residential unit.

(d) The total amount of tax credit a taxpayer may claim under this Subsection (3) for a photovoltaic system may not exceed:

(i) for a system installed on or after January 1, 2018, but on or before December 31, 2020, \$1,600;

(ii) for a system installed on or after January 1, 2021, but on or before December 31, 2021, \$1,200;

(iii) for a system installed on or after January 1, 2022, but on or before December 31, 2022, \$800;

(iv) for a system installed on or after January 1, 2023, but on or before December 31, 2023, \$400; and

(v) for a system installed on or after January 1, 2024, \$0.

(e) If a taxpayer sells a residential unit to another person before the taxpayer claims the tax credit under this Subsection (3):

(i) the taxpayer may assign the tax credit to the other person; and

(ii) (A) if the other person files a return under this chapter, the other person may claim the tax credit under this section as if the other person had met the requirements of this section to claim the tax credit; or

(B) if the other person files a return under Chapter 10, Individual Income Tax Act, the other person may claim the tax credit under Section 59-10-1014 as if the other person had met the requirements of Section 59-10-1014 to claim the tax credit.

(4) (a) Subject to the other provisions of this Subsection (4), a taxpayer may claim a

250 refundable tax credit under this Subsection (4) with respect to a commercial energy system if:

251 (i) the commercial energy system does not use~~[-(A)-]~~ wind, geothermal electricity,
252 solar, or biomass equipment capable of producing a total of 660 or more kilowatts of
253 electricity; ~~[or]~~

254 ~~[(B) solar equipment capable of producing 2,000 or more kilowatts of electricity;]~~

255 (ii) the taxpayer purchases or participates in the financing of the commercial energy
256 system;

257 (iii) (A) the commercial energy system supplies all or part of the energy required by
258 commercial units owned or used by the taxpayer; or

259 (B) the taxpayer sells all or part of the energy produced by the commercial energy
260 system as a commercial enterprise; and

261 ~~[(iv) the commercial energy system is completed and placed in service on or after~~
262 ~~January 1, 2007; and]~~

263 ~~[(v)]~~ (iv) the taxpayer obtains a written certification from the office in accordance with
264 Subsection ~~[(7)]~~ (8).

265 (b) (i) Subject to Subsections (4)(b)(ii) through ~~[(v)]~~ (iv), the tax credit is equal to 10%
266 of the reasonable costs of the commercial energy system.

267 (ii) A tax credit under this Subsection (4) may include installation costs.

268 (iii) A taxpayer ~~[may claim]~~ is eligible to claim a tax credit under this Subsection (4)
269 for the taxable year in which the commercial energy system is completed and placed in service.

270 ~~[(iv) A tax credit under this Subsection (4) may not be carried forward or carried back.]~~

271 ~~[(v)]~~ (iv) The total amount of tax credit a taxpayer may claim under this Subsection (4)
272 may not exceed \$50,000 per commercial unit.

273 (c) (i) Subject to Subsections (4)(c)(ii) and (iii), a taxpayer that is a lessee of a
274 commercial energy system installed on a commercial unit may claim a tax credit under this
275 Subsection (4) if the taxpayer ~~[confirms that the lessor irrevocably elects not to claim the tax~~
276 ~~credit]~~ obtains a written certification from the office in accordance with Subsection (8).

277 (ii) A taxpayer described in Subsection (4)(c)(i) may claim as a tax credit under this
278 Subsection (4) only the principal recovery portion of the lease payments.

279 (iii) A taxpayer described in Subsection (4)(c)(i) may claim a tax credit under this
280 Subsection (4) for a period that does not exceed seven taxable years after the ~~[date]~~ day on

281 which the lease begins, as stated in the lease agreement.

282 (5) (a) Subject to the other provisions of this Subsection (5), a taxpayer may claim a
283 refundable tax credit under this Subsection (5) with respect to a commercial energy system if:

284 (i) the commercial energy system uses wind, geothermal electricity, solar, or biomass
285 equipment capable of producing a total of 660 or more kilowatts of electricity;

286 (ii) (A) the commercial energy system supplies all or part of the energy required by
287 commercial units owned or used by the taxpayer; or

288 (B) the taxpayer sells all or part of the energy produced by the commercial energy
289 system as a commercial enterprise; and

290 ~~[(iii) the commercial energy system is completed and placed in service on or after~~
291 ~~January 1, 2007; and]~~

292 ~~[(iv)]~~ (iii) the taxpayer obtains a written certification from the office in accordance
293 with Subsection ~~[(7)]~~ (8).

294 (b) (i) Subject to ~~[Subsections]~~ Subsection (5)(b)(ii) ~~[and (iii)]~~, a tax credit under this
295 Subsection (5) is equal to the product of:

296 (A) 0.35 cents; and

297 (B) the kilowatt hours of electricity produced and used or sold during the taxable year.

298 (ii) A taxpayer is eligible to claim a tax credit under this Subsection (5) ~~[may be~~
299 ~~claimed]~~ for production occurring during a period of 48 months beginning with the month in
300 which the commercial energy system is placed in commercial service.

301 ~~[(iii) A tax credit under this Subsection (5) may not be carried forward or carried back.]~~

302 (c) A taxpayer that is a lessee of a commercial energy system installed on a commercial
303 unit may claim a tax credit under this Subsection (5) if the taxpayer ~~[confirms that the lessor~~
304 ~~irrevocably elects not to claim the tax credit]~~ obtains a written certification from the office in
305 accordance with Subsection (8).

306 ~~[(6)(a) Subject to the other provisions of this Subsection (6), a taxpayer may claim a~~
307 ~~refundable tax credit as provided in this Subsection (6) if:]~~

308 ~~[(i) the taxpayer owns a commercial energy system that uses solar equipment capable~~
309 ~~of producing a total of 660 or more kilowatts of electricity;]~~

310 ~~[(ii) (A) the commercial energy system supplies all or part of the energy required by~~
311 ~~commercial units owned or used by the taxpayer; or]~~

~~[(B) the taxpayer sells all or part of the energy produced by the commercial energy system as a commercial enterprise;]~~

~~[(iii) the taxpayer does not claim a tax credit under Subsection (4);]~~

~~[(iv) the commercial energy system is completed and placed in service on or after January 1, 2015; and]~~

~~[(v) the taxpayer obtains a written certification from the office in accordance with Subsection (7).]~~

~~[(b) (i) Subject to Subsections (6)(b)(ii) and (iii), a tax credit under this Subsection (6) is equal to the product of:]~~

~~[(A) 0.35 cents; and]~~

~~[(B) the kilowatt hours of electricity produced and used or sold during the taxable year.]~~

~~[(ii) A tax credit under this Subsection (6) may be claimed for production occurring during a period of 48 months beginning with the month in which the commercial energy system is placed in commercial service.]~~

~~[(iii) A tax credit under this Subsection (6) may not be carried forward or carried back.]~~

~~[(c) A taxpayer that is a lessee of a commercial energy system installed on a commercial unit may claim a tax credit under this Subsection (6) if the taxpayer confirms that the lessor irrevocably elects not to claim the tax credit.]~~

(6) (a) A taxpayer may claim a refundable tax credit as provided in this Subsection (6) if:

(i) the taxpayer owns a fuel cell that has a rated capacity for generating electricity of five megawatts or smaller;

(ii) the fuel cell is completed and placed in service;

(A) on or after January 1, 2022; and

(B) in an air quality control region that is in nonattainment status at the time the fuel cell is placed in service;

(iii) the fuel cell supplies all or part of the electricity required by commercial units owned or used by the taxpayer; and

(iv) the taxpayer obtains a written certification from the office in accordance with Subsection (8).

(b) (i) Subject to Subsections (6)(b)(ii) through (iii), a tax credit under this Subsection (6) is equal to 10% of the reasonable costs of the fuel cell.

(ii) A tax credit under this Subsection (6) may include installation costs.

(iii) A taxpayer is eligible to claim a tax credit under this Subsection (6) for the taxable year in which the fuel cell is placed in service.

(c) (i) Subject to Subsections (6)(c)(ii) and (iii), a taxpayer that is a lessee of a fuel cell installed on a commercial unit may claim a tax credit under this Subsection (6) if the lessee obtains a written certification from the office in accordance with Subsection (8).

(ii) A taxpayer described in Subsection (6)(c)(i) may claim as a tax credit under this Subsection (6) only the principal recovery portion of the lease payments.

(iii) A taxpayer described in Subsection (6)(c)(i) may claim a tax credit under this Subsection (6) for a period that does not exceed seven taxable years after the day on which the lease begins, as stated in the lease agreement.

(7) (a) A taxpayer may claim a refundable tax credit as provided in this Subsection (7) if:

(i) the taxpayer owns a hydrogen production system;

(ii) the hydrogen production system is completed and placed in service on or after January 1, 2022;

(iii) the taxpayer sells as a commercial enterprise, or supplies for the taxpayer's own use in commercial units, all or part of the hydrogen produced from the hydrogen production system for use in:

(A) a vehicle; or

(B) a fuel cell that has a rated capacity for generating electricity of five megawatts or less; and

(iv) the taxpayer obtains a written certification from the office in accordance with Subsection (8).

(b) (i) Subject to Subsection (7)(b)(ii), a tax credit under this Subsection (7) is equal to the product of:

(A) \$2.34; and

(B) the kilograms of hydrogen produced and stored, used, or sold during the taxable year.

(ii) A taxpayer is eligible to claim a tax credit under this Subsection (7) for production occurring during a period of 48 months beginning with the month in which the hydrogen production system is placed in commercial service.

(c) (i) Subject to Subsections (7)(c)(ii) and (iii), a taxpayer that is a lessee of a hydrogen production system installed on a commercial unit may claim a tax credit under this Subsection (7) if the lessee obtains a written certification from the office in accordance with Subsection (8).

(ii) A taxpayer described in Subsection (7)(c)(i) may claim as a tax credit under this Subsection (7) only the principal recovery portion of the lease payments.

(iii) A taxpayer described in Subsection (7)(c)(i) may claim a tax credit under this Subsection (7) for a period that does not exceed seven taxable years after the day on which the lease begins, as stated in the lease agreement.

[~~(7)~~] (8) (a) Before a taxpayer, including a lessee under Subsection (4), (5), (6), or (7), may claim a tax credit under this section, the taxpayer shall obtain a written certification from the office.

(b) The office shall issue a taxpayer that is not a lessee a written certification if the office determines that:

(i) the taxpayer meets the requirements of this section to receive a tax credit; and

(ii) the residential energy system [~~or~~], the commercial energy system, the fuel cell, or the hydrogen production system with respect to which the taxpayer seeks to claim a tax credit:

(A) has been completely installed;

(B) is a viable system for saving or producing energy from renewable resources; and

(C) is safe, reliable, efficient, and technically feasible to ensure that the residential energy system [~~or~~], the commercial energy system, the fuel cell, or the hydrogen production system uses the state's renewable and nonrenewable energy resources in an appropriate and economic manner.

(c) The office shall issue a taxpayer that is a lessee a written certification if the office receives:

(i) a copy of the lessor's written certification or other proof, in a form established by the office, that the lessor qualified for a tax credit under Subsection (4), (5), (6), or (7); and

(ii) proof that the lessor irrevocably elects not to claim the tax credit for which the

405 lessor qualified.

406 ~~[(e)]~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
407 Act, the office may make rules:

408 (i) for determining whether a residential energy system ~~[or]~~, a commercial energy
409 system, a fuel cell, or a hydrogen production system meets the requirements of Subsection ~~[(7)]~~
410 (8)(b)(ii); and

411 (ii) for purposes of a tax credit under Subsection (3) ~~[or]~~, (4), or (6), establishing the
412 reasonable costs of a residential energy system ~~[or]~~, a commercial energy system, or a fuel cell,
413 as an amount per unit of energy production.

414 ~~[(d)]~~ (e) A taxpayer, including a lessee, that obtains a written certification from the
415 office shall retain the certification for the same time period a person is required to keep books
416 and records under Section 59-1-1406.

417 ~~[(e)]~~ (f) The office shall submit to the commission an electronic list that includes:

418 (i) the name and identifying information of each taxpayer or lessee to which the office
419 issues a written certification; and

420 (ii) for each taxpayer or lessee:

421 (A) the amount of the tax credit listed on the written certification; and

422 (B) the date the renewable energy system was installed.

423 ~~[(8)]~~ (9) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
424 Act, the commission may make rules to address the certification of a tax credit under this
425 section.

426 ~~[(9)]~~ (10) A tax credit under this section is in addition to any tax credits provided under
427 the laws or rules and regulations of the United States.

428 Section 3. Section **59-10-1106** is amended to read:

429 **59-10-1106. Refundable renewable energy systems tax credits -- Definitions --**
430 **Certification -- Rulemaking authority.**

431 (1) As used in this section:

432 (a) "Active solar system" means the same as that term is defined in Section
433 59-10-1014.

434 (b) "Air quality control region" means the same as that term is defined in Section
435 59-7-614.

436 ~~[(b)]~~ (c) "Biomass system" means the same as that term is defined in Section
437 59-10-1014.

438 ~~[(e)]~~ (d) "Commercial energy system" means the same as that term is defined in
439 Section 59-7-614.

440 ~~[(d)]~~ (e) "Commercial enterprise" means the same as that term is defined in Section
441 59-7-614.

442 ~~[(e)-(i)]~~ (f) "Commercial unit" means the same as that term is defined in Section
443 59-7-614.

444 ~~[(ii) Notwithstanding Subsection (1)(e)(i):]~~

445 ~~[(A) with respect to an active solar system used for agricultural water pumping or a~~
446 ~~wind system, each individual energy generating device is considered to be a commercial unit;~~
447 ~~or]~~

448 ~~[(B) if an energy system is the building or structure that a claimant, estate, or trust uses~~
449 ~~to transact business, a commercial unit is the complete energy system itself.]~~

450 ~~[(f)]~~ (g) "Direct use geothermal system" means the same as that term is defined in
451 Section 59-10-1014.

452 (h) "Fuel cell" means the same as that term is defined in Section 59-7-614.

453 ~~[(g)]~~ (i) "Geothermal electricity" means the same as that term is defined in Section
454 59-10-1014.

455 ~~[(h)]~~ (j) "Geothermal energy" means the same as that term is defined in Section
456 59-10-1014.

457 ~~[(i)]~~ (k) "Geothermal heat pump system" means the same as that term is defined in
458 Section 59-10-1014.

459 ~~[(j)]~~ (l) "Hydroenergy system" means the same as that term is defined in Section
460 59-10-1014.

461 (m) "Hydrogen production system" means the same as that term is defined in Section
462 59-7-614.

463 (n) "Nonattainment status" means the same as that term is defined in Section 59-7-614.

464 ~~[(k)]~~ (o) "Office" means the Office of Energy Development created in Section
465 63M-4-401.

466 ~~[(t)]~~ (p) "Passive solar system" means the same as that term is defined in Section

467 59-10-1014.

468 ~~[(m)]~~ (q) "Principal recovery portion" means the same as that term is defined in Section
469 59-10-1014.

470 (r) "Renewable energy source" means the same as that term is defined in Section
471 54-17-601.

472 ~~[(n)]~~ (s) "Wind system" means the same as that term is defined in Section 59-10-1014.

473 (2) A claimant, estate, or trust may claim an energy system tax credit as provided in
474 this section against a tax due under this chapter for a taxable year.

475 (3) (a) Subject to the other provisions of this Subsection (3), a claimant, estate, or trust
476 may claim a refundable tax credit under this Subsection (3) with respect to a commercial
477 energy system if:

478 (i) the commercial energy system does not use~~[-(A)]~~ wind, geothermal electricity,
479 solar, or biomass equipment capable of producing a total of 660 or more kilowatts of
480 electricity; ~~[or]~~

481 ~~[(B) solar equipment capable of producing 2,000 or more kilowatts of electricity;]~~

482 (ii) the claimant, estate, or trust purchases or participates in the financing of the
483 commercial energy system;

484 (iii) (A) the commercial energy system supplies all or part of the energy required by
485 commercial units owned or used by the claimant, estate, or trust; or

486 (B) the claimant, estate, or trust sells all or part of the energy produced by the
487 commercial energy system as a commercial enterprise; and

488 ~~[(iv) the commercial energy system is completed and placed in service on or after~~
489 ~~January 1, 2007; and]~~

490 ~~[(v)]~~ (iv) the claimant, estate, or trust obtains a written certification from the office in
491 accordance with Subsection ~~[(6)]~~ (7).

492 (b) (i) Subject to Subsections (3)(b)(ii) through ~~[(v)]~~ (iv), the tax credit is equal to 10%
493 of the reasonable costs of the commercial energy system.

494 (ii) A tax credit under this Subsection (3) may include installation costs.

495 (iii) A claimant, estate, or trust ~~[may claim]~~ is eligible to claim a tax credit under this
496 Subsection (3) for the taxable year in which the commercial energy system is completed and
497 placed in service.

498 ~~[(iv) A tax credit under this Subsection (3) may not be carried forward or carried back.]~~

499 ~~[(v)]~~ (iv) The total amount of tax credit a claimant, estate, or trust may claim under this
500 Subsection (3) may not exceed \$50,000 per commercial unit.

501 (c) (i) Subject to Subsections (3)(c)(ii) and (iii), a claimant, estate, or trust that is a
502 lessee of a commercial energy system installed on a commercial unit may claim a tax credit
503 under this Subsection (3) if the claimant, estate, or trust ~~[confirms that the lessor irrevocably~~
504 ~~elects not to claim the tax credit]~~ obtains a written certification from the office in accordance
505 with Subsection (7).

506 (ii) A claimant, estate, or trust described in Subsection (3)(c)(i) may claim as a tax
507 credit under this Subsection (3) only the principal recovery portion of the lease payments.

508 (iii) A claimant, estate, or trust described in Subsection (3)(c)(i) may claim a tax credit
509 under this Subsection (3) for a period that does not exceed seven taxable years after the ~~[date]~~
510 day on which the lease begins, as stated in the lease agreement.

511 (4) (a) Subject to the other provisions of this Subsection (4), a claimant, estate, or trust
512 may claim a refundable tax credit under this Subsection (4) with respect to a commercial
513 energy system if:

514 (i) the commercial energy system uses wind, geothermal electricity, solar, or biomass
515 equipment capable of producing a total of 660 or more kilowatts of electricity;

516 (ii) (A) the commercial energy system supplies all or part of the energy required by
517 commercial units owned or used by the claimant, estate, or trust; or

518 (B) the claimant, estate, or trust sells all or part of the energy produced by the
519 commercial energy system as a commercial enterprise; and

520 ~~[(iii) the commercial energy system is completed and placed in service on or after~~
521 ~~January 1, 2007; and]~~

522 ~~[(iv)]~~ (iii) the claimant, estate, or trust obtains a written certification from the office in
523 accordance with Subsection ~~[(6)]~~ (7).

524 (b) (i) Subject to ~~[Subsections]~~ Subsection (4)(b)(ii) ~~[and (iii)]~~, a tax credit under this
525 Subsection (4) is equal to the product of:

526 (A) 0.35 cents; and

527 (B) the kilowatt hours of electricity produced and used or sold during the taxable year.

528 (ii) A claimant, estate, or trust is eligible to claim a tax credit under this Subsection (4)

[~~may be claimed~~] for production occurring during a period of 48 months beginning with the month in which the commercial energy system is placed in commercial service.

~~[(iii) A tax credit under this Subsection (4) may not be carried forward or back.]~~

(c) A claimant, estate, or trust that is a lessee of a commercial energy system installed on a commercial unit may claim a tax credit under this Subsection (4) if the claimant, estate, or trust ~~[confirms that the lessor irrevocably elects not to claim the tax credit]~~ obtains a written certification from the office in accordance with Subsection (7).

~~[(5)(a) Subject to the other provisions of this Subsection (5), a claimant, estate, or trust may claim a refundable tax credit as provided in this Subsection (5) if:]~~

~~[(i) the claimant, estate, or trust owns a commercial energy system that uses solar equipment capable of producing a total of 660 or more kilowatts of electricity;]~~

~~[(ii) (A) the commercial energy system supplies all or part of the energy required by commercial units owned or used by the claimant, estate, or trust; or]~~

~~[(B) the claimant, estate, or trust sells all or part of the energy produced by the commercial energy system as a commercial enterprise;]~~

~~[(iii) the claimant, estate, or trust does not claim a tax credit under Subsection (3);]~~

~~[(iv) the commercial energy system is completed and placed in service on or after January 1, 2015; and]~~

~~[(v) the claimant, estate, or trust obtains a written certification from the office in accordance with Subsection (6).]~~

~~[(b) (i) Subject to Subsections (5)(b)(ii) and (iii), a tax credit under this Subsection (5) is equal to the product of:]~~

~~[(A) 0.35 cents; and]~~

~~[(B) the kilowatt hours of electricity produced and used or sold during the taxable year.]~~

~~[(ii) A tax credit under this Subsection (5) may be claimed for production occurring during a period of 48 months beginning with the month in which the commercial energy system is placed in commercial service.]~~

~~[(iii) A tax credit under this Subsection (5) may not be carried forward or carried back.]~~

~~[(c) A claimant, estate, or trust that is a lessee of a commercial energy system installed on a commercial unit may claim a tax credit under this Subsection (5) if the claimant, estate, or~~

trust confirms that the lessor irrevocably elects not to claim the tax credit.]

(5) (a) A claimant, estate, or trust may claim a refundable tax credit as provided in this Subsection (5) if:

(i) the claimant, estate, or trust owns a fuel cell that has a rated capacity for generating electricity of five megawatts or smaller;

(ii) the fuel cell is completed and placed in service:

(A) on or after January 1, 2022; and

(B) in an air quality control region that is in nonattainment status at the time the fuel cell is placed in service;

(iii) the fuel cell supplies all or part of the electricity required by commercial units owned or used by the claimant, estate, or trust; and

(iv) the claimant, estate, or trust obtains a written certification from the office in accordance with Subsection (7).

(b) (i) Subject to Subsections (5)(b)(ii) through (iii), a tax credit under this Subsection (5) is equal to 10% of the reasonable costs of the fuel cell.

(ii) A tax credit under this Subsection (5) may include installation costs.

(iii) A claimant, estate, or trust is eligible to claim a tax credit under this Subsection (5) for the taxable year in which the fuel cell is placed in service.

(c) (i) Subject to Subsections (5)(c)(ii) and (iii), a claimant, estate, or trust that is a lessee of a fuel cell installed on a commercial unit may claim a tax credit under this Subsection (5) if the lessee obtains a written certification from the office in accordance with Subsection (7).

(ii) A claimant, estate, or trust described in Subsection (5)(c)(i) may claim as a tax credit under this Subsection (5) only the principal recovery portion of the lease payments.

(iii) A claimant, estate, or trust described in Subsection (5)(c)(i) may claim a tax credit under this Subsection (5) for a period that does not exceed seven taxable years after the day on which the lease begins, as stated in the lease agreement.

(6) (a) A claimant, estate, or trust may claim a refundable tax credit as provided in this Subsection (6) if:

(i) the claimant, estate, or trust owns a hydrogen production system;

(ii) the hydrogen production system is completed and placed in service on or after

591 January 1, 2022;

592 (iii) the claimant, estate, or trust sells as a commercial enterprise, or supplies for the
593 claimant's, estate's, or trust's own use in commercial units, all or part of the hydrogen produced
594 from the hydrogen production system for use in:

595 (A) a vehicle; or

596 (B) a fuel cell that has a rated capacity for generating electricity of five megawatts or
597 less; and

598 (iv) the claimant, estate, or trust obtains a written certification from the office in
599 accordance with Subsection (7).

600 (b) (i) Subject to Subsection (6)(b)(ii), a tax credit under this Subsection (6) is equal to
601 the product of:

602 (A) \$2.34; and

603 (B) the kilograms of hydrogen produced and stored, used, or sold during the taxable
604 year.

605 (ii) A claimant, estate, or trust is eligible to claim a tax credit under this Subsection (6)
606 for production occurring during a period of 48 months beginning with the month in which the
607 hydrogen production system is placed in commercial service.

608 (c) (i) Subject to Subsections (6)(c)(ii) and (iii), a claimant, estate, or trust that is a
609 lessee of a hydrogen production system installed on a commercial unit may claim a tax credit
610 under this Subsection (6) if the lessee obtains a written certification from the office in
611 accordance with Subsection (7).

612 (ii) A claimant, estate, or trust described in Subsection (6)(c)(i) may claim as a tax
613 credit under this Subsection (6) only the principal recovery portion of the lease payments.

614 (iii) A claimant, estate, or trust described in Subsection (6)(c)(i) may claim a tax credit
615 under this Subsection (6) for a period that does not exceed seven taxable years after the day on
616 which the lease begins, as stated in the lease agreement.

617 ~~[(6)]~~ (7) (a) Before a claimant, estate, or trust, including a lessee, may claim a tax
618 credit under this section, the claimant, estate, or trust shall obtain a written certification from
619 the office.

620 (b) The office shall issue a claimant, estate, or trust that is not a lessee a written
621 certification if the office determines that:

(i) the claimant, estate, or trust meets the requirements of this section to receive a tax credit; and

(ii) the office determines that the commercial energy system, the fuel cell, or the hydrogen production system with respect to which the claimant, estate, or trust seeks to claim a tax credit:

(A) has been completely installed;

(B) is a viable system for saving or producing energy from renewable resources; and

(C) is safe, reliable, efficient, and technically feasible to ensure that the commercial energy system, the fuel cell, or the hydrogen production system uses the state's renewable and nonrenewable resources in an appropriate and economic manner.

(c) The office shall issue a claimant, estate, or trust that is a lessee a written certification if the office receives:

(i) a copy of the lessor's written certification or other proof, in a form established by the office, that the lessor qualified for a tax credit under this section; and

(ii) proof that the lessor irrevocably elects not to claim the tax credit for which the lessor qualified.

~~[(e)]~~ (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office may make rules:

(i) for determining whether a commercial energy system, a fuel cell, or a hydrogen production system meets the requirements of Subsection ~~[(6)]~~ (7)(b)(ii); and

(ii) for purposes of a tax credit under Subsection (3) or (5), establishing the reasonable costs of a commercial energy system or a fuel cell, as an amount per unit of energy production.

~~[(d)]~~ (e) A claimant, estate, or trust, including a lessee, that obtains a written certification from the office shall retain the certification for the same time period a person is required to keep books and records under Section 59-1-1406.

(f) The office shall submit to the commission an electronic list that includes:

(i) the name and identifying information of each claimant, estate, trust, or lessee to which the office issues a written certification; and

(ii) for each claimant, estate, trust, or lessee:

(A) the amount of the tax credit listed on the written certification; and

(B) the date the commercial energy system, the fuel cell, or the hydrogen production

653 system was installed.

654 ~~[(7)]~~ (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
655 Act, the commission may make rules to address the certification of a tax credit under this
656 section.

657 ~~[(8)]~~ (9) A tax credit under this section is in addition to any tax credits provided under
658 the laws or rules and regulations of the United States.

659 ~~[(9)]~~ (10) A purchaser of one or more solar units that claims a tax credit under Section
660 59-10-1024 for the purchase of the one or more solar units may not claim a tax credit under this
661 section for that purchase.

662 Section 4. Section **59-12-102** is amended to read:

663 **59-12-102. Definitions.**

664 As used in this chapter:

665 (1) "800 service" means a telecommunications service that:

666 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

667 (b) is typically marketed:

668 (i) under the name 800 toll-free calling;

669 (ii) under the name 855 toll-free calling;

670 (iii) under the name 866 toll-free calling;

671 (iv) under the name 877 toll-free calling;

672 (v) under the name 888 toll-free calling; or

673 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the
674 Federal Communications Commission.

675 (2) (a) "900 service" means an inbound toll telecommunications service that:

676 (i) a subscriber purchases;

677 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to
678 the subscriber's:

679 (A) prerecorded announcement; or

680 (B) live service; and

681 (iii) is typically marketed:

682 (A) under the name 900 service; or

683 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal

684 Communications Commission.

685 (b) "900 service" does not include a charge for:

686 (i) a collection service a seller of a telecommunications service provides to a
687 subscriber; or

688 (ii) the following a subscriber sells to the subscriber's customer:

689 (A) a product; or

690 (B) a service.

691 (3) (a) "Admission or user fees" includes season passes.

692 (b) "Admission or user fees" does not include:

693 (i) annual membership dues to private organizations; or

694 (ii) a lesson, including a lesson that involves as part of the lesson equipment or a
695 facility listed in Subsection 59-12-103(1)(f).

696 (4) "Affiliate" or "affiliated person" means a person that, with respect to another
697 person:

698 (a) has an ownership interest of more than 5%, whether direct or indirect, in that other
699 person; or

700 (b) is related to the other person because a third person, or a group of third persons who
701 are affiliated persons with respect to each other, holds an ownership interest of more than 5%,
702 whether direct or indirect, in the related persons.

703 (5) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on
704 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax
705 Agreement after November 12, 2002.

706 (6) "Agreement combined tax rate" means the sum of the tax rates:

707 (a) listed under Subsection (7); and

708 (b) that are imposed within a local taxing jurisdiction.

709 (7) "Agreement sales and use tax" means a tax imposed under:

710 (a) Subsection 59-12-103(2)(a)(i)(A);

711 (b) Subsection 59-12-103(2)(b)(i);

712 (c) Subsection 59-12-103(2)(c)(i);

713 (d) Subsection 59-12-103(2)(d)(i)(A)(I);

714 (e) Section 59-12-204;

- 715 (f) Section 59-12-401;
716 (g) Section 59-12-402;
717 (h) Section 59-12-402.1;
718 (i) Section 59-12-703;
719 (j) Section 59-12-802;
720 (k) Section 59-12-804;
721 (l) Section 59-12-1102;
722 (m) Section 59-12-1302;
723 (n) Section 59-12-1402;
724 (o) Section 59-12-1802;
725 (p) Section 59-12-2003;
726 (q) Section 59-12-2103;
727 (r) Section 59-12-2213;
728 (s) Section 59-12-2214;
729 (t) Section 59-12-2215;
730 (u) Section 59-12-2216;
731 (v) Section 59-12-2217;
732 (w) Section 59-12-2218;
733 (x) Section 59-12-2219; or
734 (y) Section 59-12-2220.
735 (8) "Aircraft" means the same as that term is defined in Section 72-10-102.
736 (9) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
737 (a) except for:
738 (i) an airline as defined in Section 59-2-102; or
739 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
740 includes a corporation that is qualified to do business but is not otherwise doing business in the
741 state, of an airline; and
742 (b) that has the workers, expertise, and facilities to perform the following, regardless of
743 whether the business entity performs the following in this state:
744 (i) check, diagnose, overhaul, and repair:
745 (A) an onboard system of a fixed wing turbine powered aircraft; and

- 746 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
747 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
748 engine;
749 (iii) perform at least the following maintenance on a fixed wing turbine powered
750 aircraft:
751 (A) an inspection;
752 (B) a repair, including a structural repair or modification;
753 (C) changing landing gear; and
754 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
755 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
756 completely apply new paint to the fixed wing turbine powered aircraft; and
757 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
758 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
759 authority that certifies the fixed wing turbine powered aircraft.
- 760 (10) "Alcoholic beverage" means a beverage that:
761 (a) is suitable for human consumption; and
762 (b) contains .5% or more alcohol by volume.
- 763 (11) "Alternative energy" means:
764 (a) biomass energy;
765 (b) fuel cell system energy;
766 ~~[(b)]~~ (c) geothermal energy;
767 ~~[(c)]~~ (d) hydroelectric energy;
768 ~~[(d)]~~ (e) solar energy;
769 ~~[(e)]~~ (f) wind energy; or
770 ~~[(f)]~~ (g) energy that is derived from:
771 (i) coal-to-liquids;
772 (ii) nuclear fuel;
773 (iii) oil-impregnated diatomaceous earth;
774 (iv) oil sands;
775 (v) oil shale;
776 (vi) petroleum coke; or

777 (vii) waste heat from:
778 (A) an industrial facility; or
779 (B) a power station in which an electric generator is driven through a process in which
780 water is heated, turns into steam, and spins a steam turbine.

781 (12) (a) Subject to Subsection (12)(b), "alternative energy electricity production
782 facility" means a facility that:
783 (i) uses alternative energy to produce electricity; and
784 (ii) has a production capacity of two megawatts or greater.

785 (b) A facility is an alternative energy electricity production facility regardless of
786 whether the facility is:
787 (i) connected to an electric grid; or
788 (ii) located on the premises of an electricity consumer.

789 (13) (a) "Ancillary service" means a service associated with, or incidental to, the
790 provision of telecommunications service.

791 (b) "Ancillary service" includes:
792 (i) a conference bridging service;
793 (ii) a detailed communications billing service;
794 (iii) directory assistance;
795 (iv) a vertical service; or
796 (v) a voice mail service.

797 (14) "Area agency on aging" means the same as that term is defined in Section
798 62A-3-101.

799 (15) "Assisted amusement device" means an amusement device, skill device, or ride
800 device that is started and stopped by an individual:
801 (a) who is not the purchaser or renter of the right to use or operate the amusement
802 device, skill device, or ride device; and
803 (b) at the direction of the seller of the right to use the amusement device, skill device,
804 or ride device.

805 (16) "Assisted cleaning or washing of tangible personal property" means cleaning or
806 washing of tangible personal property if the cleaning or washing labor is primarily performed
807 by an individual:

808 (a) who is not the purchaser of the cleaning or washing of the tangible personal
809 property; and

810 (b) at the direction of the seller of the cleaning or washing of the tangible personal
811 property.

812 (17) "Authorized carrier" means:

813 (a) in the case of vehicles operated over public highways, the holder of credentials
814 indicating that the vehicle is or will be operated pursuant to both the International Registration
815 Plan and the International Fuel Tax Agreement;

816 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
817 certificate or air carrier's operating certificate; or

818 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
819 stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling
820 stock in more than one state.

821 (18) (a) [~~Except as provided in Subsection (18)(b), "biomass"~~] "Biomass energy" means
822 any of the following that is used as the primary source of energy to produce fuel or electricity:

823 (i) material from a plant or tree; or

824 (ii) other organic matter that is available on a renewable basis, including:

825 (A) slash and brush from forests and woodlands;

826 (B) animal waste;

827 (C) waste vegetable oil;

828 (D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of
829 wastewater residuals, or through the conversion of a waste material through a nonincineration,
830 thermal conversion process;

831 (E) aquatic plants; and

832 (F) agricultural products.

833 (b) "Biomass energy" does not include:

834 (i) black liquor; or

835 (ii) treated woods.

836 (19) (a) "Bundled transaction" means the sale of two or more items of tangible personal
837 property, products, or services if the tangible personal property, products, or services are:

838 (i) distinct and identifiable; and

- 839 (ii) sold for one nonitemized price.
- 840 (b) "Bundled transaction" does not include:
- 841 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 842 the basis of the selection by the purchaser of the items of tangible personal property included in
- 843 the transaction;
- 844 (ii) the sale of real property;
- 845 (iii) the sale of services to real property;
- 846 (iv) the retail sale of tangible personal property and a service if:
- 847 (A) the tangible personal property:
- 848 (I) is essential to the use of the service; and
- 849 (II) is provided exclusively in connection with the service; and
- 850 (B) the service is the true object of the transaction;
- 851 (v) the retail sale of two services if:
- 852 (A) one service is provided that is essential to the use or receipt of a second service;
- 853 (B) the first service is provided exclusively in connection with the second service; and
- 854 (C) the second service is the true object of the transaction;
- 855 (vi) a transaction that includes tangible personal property or a product subject to
- 856 taxation under this chapter and tangible personal property or a product that is not subject to
- 857 taxation under this chapter if the:
- 858 (A) seller's purchase price of the tangible personal property or product subject to
- 859 taxation under this chapter is de minimis; or
- 860 (B) seller's sales price of the tangible personal property or product subject to taxation
- 861 under this chapter is de minimis; and
- 862 (vii) the retail sale of tangible personal property that is not subject to taxation under
- 863 this chapter and tangible personal property that is subject to taxation under this chapter if:
- 864 (A) that retail sale includes:
- 865 (I) food and food ingredients;
- 866 (II) a drug;
- 867 (III) durable medical equipment;
- 868 (IV) mobility enhancing equipment;
- 869 (V) an over-the-counter drug;

870 (VI) a prosthetic device; or
871 (VII) a medical supply; and
872 (B) subject to Subsection (19)(f):
873 (I) the seller's purchase price of the tangible personal property subject to taxation under
874 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
875 (II) the seller's sales price of the tangible personal property subject to taxation under
876 this chapter is 50% or less of the seller's total sales price of that retail sale.
877 (c) (i) For purposes of Subsection (19)(a)(i), tangible personal property, a product, or a
878 service that is distinct and identifiable does not include:
879 (A) packaging that:
880 (I) accompanies the sale of the tangible personal property, product, or service; and
881 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
882 service;
883 (B) tangible personal property, a product, or a service provided free of charge with the
884 purchase of another item of tangible personal property, a product, or a service; or
885 (C) an item of tangible personal property, a product, or a service included in the
886 definition of "purchase price."
887 (ii) For purposes of Subsection (19)(c)(i)(B), an item of tangible personal property, a
888 product, or a service is provided free of charge with the purchase of another item of tangible
889 personal property, a product, or a service if the sales price of the purchased item of tangible
890 personal property, product, or service does not vary depending on the inclusion of the tangible
891 personal property, product, or service provided free of charge.
892 (d) (i) For purposes of Subsection (19)(a)(ii), property sold for one nonitemized price
893 does not include a price that is separately identified by tangible personal property, product, or
894 service on the following, regardless of whether the following is in paper format or electronic
895 format:
896 (A) a binding sales document; or
897 (B) another supporting sales-related document that is available to a purchaser.
898 (ii) For purposes of Subsection (19)(d)(i), a binding sales document or another
899 supporting sales-related document that is available to a purchaser includes:
900 (A) a bill of sale;

- 901 (B) a contract;
- 902 (C) an invoice;
- 903 (D) a lease agreement;
- 904 (E) a periodic notice of rates and services;
- 905 (F) a price list;
- 906 (G) a rate card;
- 907 (H) a receipt; or
- 908 (I) a service agreement.

909 (e) (i) For purposes of Subsection (19)(b)(vi), the sales price of tangible personal
910 property or a product subject to taxation under this chapter is de minimis if:

911 (A) the seller's purchase price of the tangible personal property or product is 10% or
912 less of the seller's total purchase price of the bundled transaction; or

913 (B) the seller's sales price of the tangible personal property or product is 10% or less of
914 the seller's total sales price of the bundled transaction.

915 (ii) For purposes of Subsection (19)(b)(vi), a seller:

916 (A) shall use the seller's purchase price or the seller's sales price to determine if the
917 purchase price or sales price of the tangible personal property or product subject to taxation
918 under this chapter is de minimis; and

919 (B) may not use a combination of the seller's purchase price and the seller's sales price
920 to determine if the purchase price or sales price of the tangible personal property or product
921 subject to taxation under this chapter is de minimis.

922 (iii) For purposes of Subsection (19)(b)(vi), a seller shall use the full term of a service
923 contract to determine if the sales price of tangible personal property or a product is de minimis.

924 (f) For purposes of Subsection (19)(b)(vii)(B), a seller may not use a combination of
925 the seller's purchase price and the seller's sales price to determine if tangible personal property
926 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
927 price of that retail sale.

928 (20) "Certified automated system" means software certified by the governing board of
929 the agreement that:

930 (a) calculates the agreement sales and use tax imposed within a local taxing
931 jurisdiction:

932 (i) on a transaction; and
933 (ii) in the states that are members of the agreement;
934 (b) determines the amount of agreement sales and use tax to remit to a state that is a
935 member of the agreement; and
936 (c) maintains a record of the transaction described in Subsection (20)(a)(i).
937 (21) "Certified service provider" means an agent certified:
938 (a) by the governing board of the agreement; and
939 (b) to perform a seller's sales and use tax functions for an agreement sales and use tax,
940 as outlined in the contract between the governing board of the agreement and the certified
941 service provider, other than the seller's obligation under Section 59-12-124 to remit a tax on the
942 seller's own purchases.
943 (22) (a) Subject to Subsection (22)(b), "clothing" means all human wearing apparel
944 suitable for general use.
945 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
946 commission shall make rules:
947 (i) listing the items that constitute "clothing"; and
948 (ii) that are consistent with the list of items that constitute "clothing" under the
949 agreement.
950 (23) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.
951 (24) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, hydrogen,
952 or other fuels that does not constitute industrial use under Subsection (57) or residential use
953 under Subsection (112).
954 (25) (a) "Common carrier" means a person engaged in or transacting the business of
955 transporting passengers, freight, merchandise, or other property for hire within this state.
956 (b) (i) "Common carrier" does not include a person that, at the time the person is
957 traveling to or from that person's place of employment, transports a passenger to or from the
958 passenger's place of employment.
959 (ii) For purposes of Subsection (25)(b)(i), in accordance with Title 63G, Chapter 3,
960 Utah Administrative Rulemaking Act, the commission may make rules defining what
961 constitutes a person's place of employment.
962 (c) "Common carrier" does not include a person that provides transportation network

963 services, as defined in Section 13-51-102.

964 (26) "Component part" includes:

965 (a) poultry, dairy, and other livestock feed, and their components;

966 (b) baling ties and twine used in the baling of hay and straw;

967 (c) fuel used for providing temperature control of orchards and commercial

968 greenhouses doing a majority of their business in wholesale sales, and for providing power for

969 off-highway type farm machinery; and

970 (d) feed, seeds, and seedlings.

971 (27) "Computer" means an electronic device that accepts information:

972 (a) (i) in digital form; or

973 (ii) in a form similar to digital form; and

974 (b) manipulates that information for a result based on a sequence of instructions.

975 (28) "Computer software" means a set of coded instructions designed to cause:

976 (a) a computer to perform a task; or

977 (b) automatic data processing equipment to perform a task.

978 (29) "Computer software maintenance contract" means a contract that obligates a seller
979 of computer software to provide a customer with:

980 (a) future updates or upgrades to computer software;

981 (b) support services with respect to computer software; or

982 (c) a combination of Subsections (29)(a) and (b).

983 (30) (a) "Conference bridging service" means an ancillary service that links two or
984 more participants of an audio conference call or video conference call.

985 (b) "Conference bridging service" may include providing a telephone number as part of
986 the ancillary service described in Subsection (30)(a).

987 (c) "Conference bridging service" does not include a telecommunications service used
988 to reach the ancillary service described in Subsection (30)(a).

989 (31) "Construction materials" means any tangible personal property that will be
990 converted into real property.

991 (32) "Delivered electronically" means delivered to a purchaser by means other than
992 tangible storage media.

993 (33) (a) "Delivery charge" means a charge:

- 994 (i) by a seller of:
995 (A) tangible personal property;
996 (B) a product transferred electronically; or
997 (C) a service; and
998 (ii) for preparation and delivery of the tangible personal property, product transferred
999 electronically, or services described in Subsection (33)(a)(i) to a location designated by the
1000 purchaser.
- 1001 (b) "Delivery charge" includes a charge for the following:
1002 (i) transportation;
1003 (ii) shipping;
1004 (iii) postage;
1005 (iv) handling;
1006 (v) crating; or
1007 (vi) packing.
- 1008 (34) "Detailed telecommunications billing service" means an ancillary service of
1009 separately stating information pertaining to individual calls on a customer's billing statement.
- 1010 (35) "Dietary supplement" means a product, other than tobacco, that:
1011 (a) is intended to supplement the diet;
1012 (b) contains one or more of the following dietary ingredients:
1013 (i) a vitamin;
1014 (ii) a mineral;
1015 (iii) an herb or other botanical;
1016 (iv) an amino acid;
1017 (v) a dietary substance for use by humans to supplement the diet by increasing the total
1018 dietary intake; or
1019 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
1020 described in Subsections (35)(b)(i) through (v);
1021 (c) (i) except as provided in Subsection (35)(c)(ii), is intended for ingestion in:
1022 (A) tablet form;
1023 (B) capsule form;
1024 (C) powder form;

- 1025 (D) softgel form;
- 1026 (E) gelcap form; or
- 1027 (F) liquid form; or
- 1028 (ii) if the product is not intended for ingestion in a form described in Subsections
- 1029 (35)(c)(i)(A) through (F), is not represented:
- 1030 (A) as conventional food; and
- 1031 (B) for use as a sole item of:
- 1032 (I) a meal; or
- 1033 (II) the diet; and
- 1034 (d) is required to be labeled as a dietary supplement:
- 1035 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 1036 (ii) as required by 21 C.F.R. Sec. 101.36.
- 1037 (36) (a) "Digital audio work" means a work that results from the fixation of a series of
- 1038 musical, spoken, or other sounds.
- 1039 (b) "Digital audio work" includes a ringtone.
- 1040 (37) "Digital audio-visual work" means a series of related images which, when shown
- 1041 in succession, imparts an impression of motion, together with accompanying sounds, if any.
- 1042 (38) "Digital book" means a work that is generally recognized in the ordinary and usual
- 1043 sense as a book.
- 1044 (39) (a) "Direct mail" means printed material delivered or distributed by United States
- 1045 mail or other delivery service:
- 1046 (i) to:
- 1047 (A) a mass audience; or
- 1048 (B) addressees on a mailing list provided:
- 1049 (I) by a purchaser of the mailing list; or
- 1050 (II) at the discretion of the purchaser of the mailing list; and
- 1051 (ii) if the cost of the printed material is not billed directly to the recipients.
- 1052 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 1053 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 1054 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 1055 single address.

- 1056 (40) "Directory assistance" means an ancillary service of providing:
1057 (a) address information; or
1058 (b) telephone number information.
- 1059 (41) (a) "Disposable home medical equipment or supplies" means medical equipment
1060 or supplies that:
1061 (i) cannot withstand repeated use; and
1062 (ii) are purchased by, for, or on behalf of a person other than:
1063 (A) a health care facility as defined in Section 26-21-2;
1064 (B) a health care provider as defined in Section 78B-3-403;
1065 (C) an office of a health care provider described in Subsection (41)(a)(ii)(B); or
1066 (D) a person similar to a person described in Subsections (41)(a)(ii)(A) through (C).
1067 (b) "Disposable home medical equipment or supplies" does not include:
1068 (i) a drug;
1069 (ii) durable medical equipment;
1070 (iii) a hearing aid;
1071 (iv) a hearing aid accessory;
1072 (v) mobility enhancing equipment; or
1073 (vi) tangible personal property used to correct impaired vision, including:
1074 (A) eyeglasses; or
1075 (B) contact lenses.
- 1076 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1077 commission may by rule define what constitutes medical equipment or supplies.
- 1078 (42) "Drilling equipment manufacturer" means a facility:
1079 (a) located in the state;
1080 (b) with respect to which 51% or more of the manufacturing activities of the facility
1081 consist of manufacturing component parts of drilling equipment;
1082 (c) that uses pressure of 800,000 or more pounds per square inch as part of the
1083 manufacturing process; and
1084 (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the
1085 manufacturing process.
- 1086 (43) (a) "Drug" means a compound, substance, or preparation, or a component of a

1087 compound, substance, or preparation that is:

1088 (i) recognized in:

1089 (A) the official United States Pharmacopoeia;

1090 (B) the official Homeopathic Pharmacopoeia of the United States;

1091 (C) the official National Formulary; or

1092 (D) a supplement to a publication listed in Subsections (43)(a)(i)(A) through (C);

1093 (ii) intended for use in the:

1094 (A) diagnosis of disease;

1095 (B) cure of disease;

1096 (C) mitigation of disease;

1097 (D) treatment of disease; or

1098 (E) prevention of disease; or

1099 (iii) intended to affect:

1100 (A) the structure of the body; or

1101 (B) any function of the body.

1102 (b) "Drug" does not include:

1103 (i) food and food ingredients;

1104 (ii) a dietary supplement;

1105 (iii) an alcoholic beverage; or

1106 (iv) a prosthetic device.

1107 (44) (a) [~~Except as provided in Subsection (44)(c), "durable"~~] "Durable" medical

1108 equipment" means equipment that:

1109 (i) can withstand repeated use;

1110 (ii) is primarily and customarily used to serve a medical purpose;

1111 (iii) generally is not useful to a person in the absence of illness or injury; and

1112 (iv) is not worn in or on the body.

1113 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
1114 equipment described in Subsection (44)(a).

1115 (c) "Durable medical equipment" does not include mobility enhancing equipment.

1116 (45) "Electronic" means:

1117 (a) relating to technology; and

- 1118 (b) having:
- 1119 (i) electrical capabilities;
- 1120 (ii) digital capabilities;
- 1121 (iii) magnetic capabilities;
- 1122 (iv) wireless capabilities;
- 1123 (v) optical capabilities;
- 1124 (vi) electromagnetic capabilities; or
- 1125 (vii) capabilities similar to Subsections (45)(b)(i) through (vi).
- 1126 (46) "Electronic financial payment service" means an establishment:
- 1127 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
- 1128 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
- 1129 federal Executive Office of the President, Office of Management and Budget; and
- 1130 (b) that performs electronic financial payment services.
- 1131 (47) "Employee" means the same as that term is defined in Section 59-10-401.
- 1132 (48) "Fixed guideway" means a public transit facility that uses and occupies:
- 1133 (a) rail for the use of public transit; or
- 1134 (b) a separate right-of-way for the use of public transit.
- 1135 (49) "Fixed wing turbine powered aircraft" means an aircraft that:
- 1136 (a) is powered by turbine engines;
- 1137 (b) operates on jet fuel; and
- 1138 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 1139 (50) "Fixed wireless service" means a telecommunications service that provides radio
- 1140 communication between fixed points.
- 1141 (51) (a) "Food and food ingredients" means substances:
- 1142 (i) regardless of whether the substances are in:
- 1143 (A) liquid form;
- 1144 (B) concentrated form;
- 1145 (C) solid form;
- 1146 (D) frozen form;
- 1147 (E) dried form; or
- 1148 (F) dehydrated form; and

- 1149 (ii) that are:
- 1150 (A) sold for:
- 1151 (I) ingestion by humans; or
- 1152 (II) chewing by humans; and
- 1153 (B) consumed for the substance's:
- 1154 (I) taste; or
- 1155 (II) nutritional value.
- 1156 (b) "Food and food ingredients" includes an item described in Subsection (96)(b)(iii).
- 1157 (c) "Food and food ingredients" does not include:
- 1158 (i) an alcoholic beverage;
- 1159 (ii) tobacco; or
- 1160 (iii) prepared food.
- 1161 (52) (a) "Fundraising sales" means sales:
- 1162 (i) (A) made by a school; or
- 1163 (B) made by a school student;
- 1164 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 1165 materials, or provide transportation; and
- 1166 (iii) that are part of an officially sanctioned school activity.
- 1167 (b) For purposes of Subsection (52)(a)(iii), "officially sanctioned school activity"
- 1168 means a school activity:
- 1169 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 1170 district governing the authorization and supervision of fundraising activities;
- 1171 (ii) that does not directly or indirectly compensate an individual teacher or other
- 1172 educational personnel by direct payment, commissions, or payment in kind; and
- 1173 (iii) the net or gross revenues from which are deposited in a dedicated account
- 1174 controlled by the school or school district.
- 1175 (53) "Geothermal energy" means energy contained in heat that continuously flows
- 1176 outward from the earth that is used as the sole source of energy to produce electricity.
- 1177 (54) "Governing board of the agreement" means the governing board of the agreement
- 1178 that is:
- 1179 (a) authorized to administer the agreement; and

1180 (b) established in accordance with the agreement.

1181 (55) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:

1182 (i) the executive branch of the state, including all departments, institutions, boards,

1183 divisions, bureaus, offices, commissions, and committees;

1184 (ii) the judicial branch of the state, including the courts, the Judicial Council, the

1185 Administrative Office of the Courts, and similar administrative units in the judicial branch;

1186 (iii) the legislative branch of the state, including the House of Representatives, the

1187 Senate, the Legislative Printing Office, the Office of Legislative Research and General

1188 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal

1189 Analyst;

1190 (iv) the National Guard;

1191 (v) an independent entity as defined in Section 63E-1-102; or

1192 (vi) a political subdivision as defined in Section 17B-1-102.

1193 (b) "Governmental entity" does not include the state systems of public and higher

1194 education, including:

1195 (i) a school;

1196 (ii) the State Board of Education;

1197 (iii) the Utah Board of Higher Education; or

1198 (iv) an institution of higher education described in Section 53B-1-102.

1199 (56) "Hydroelectric energy" means water used as the sole source of energy to produce

1200 electricity.

1201 (57) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil,

1202 hydrogen, or other fuels:

1203 (a) in mining or extraction of minerals;

1204 (b) in agricultural operations to produce an agricultural product up to the time of

1205 harvest or placing the agricultural product into a storage facility, including:

1206 (i) commercial greenhouses;

1207 (ii) irrigation pumps;

1208 (iii) farm machinery;

1209 (iv) implements of husbandry as defined in Section 41-1a-102 that are not registered

1210 under Title 41, Chapter 1a, Part 2, Registration; and

- 1211 (v) other farming activities;
- 1212 (c) in manufacturing tangible personal property at an establishment described in:
- 1213 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
- 1214 the federal Executive Office of the President, Office of Management and Budget; or
- 1215 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
- 1216 American Industry Classification System of the federal Executive Office of the President,
- 1217 Office of Management and Budget;
- 1218 (d) by a scrap recycler if:
- 1219 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 1220 one or more of the following items into prepared grades of processed materials for use in new
- 1221 products:
- 1222 (A) iron;
- 1223 (B) steel;
- 1224 (C) nonferrous metal;
- 1225 (D) paper;
- 1226 (E) glass;
- 1227 (F) plastic;
- 1228 (G) textile; or
- 1229 (H) rubber; and
- 1230 (ii) the new products under Subsection (57)(d)(i) would otherwise be made with
- 1231 nonrecycled materials; or
- 1232 (e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a
- 1233 cogeneration facility as defined in Section 54-2-1.
- 1234 (58) (a) [~~Except as provided in Subsection (58)(b), "installation"~~] "Installation charge"
- 1235 means a charge for installing:
- 1236 (i) tangible personal property; or
- 1237 (ii) a product transferred electronically.
- 1238 (b) "Installation charge" does not include a charge for:
- 1239 (i) repairs or renovations of:
- 1240 (A) tangible personal property; or
- 1241 (B) a product transferred electronically; or

- 1242 (ii) attaching tangible personal property or a product transferred electronically:
1243 (A) to other tangible personal property; and
1244 (B) as part of a manufacturing or fabrication process.
- 1245 (59) "Institution of higher education" means an institution of higher education listed in
1246 Section 53B-2-101.
- 1247 (60) (a) "Lease" or "rental" means a transfer of possession or control of tangible
1248 personal property or a product transferred electronically for:
1249 (i) (A) a fixed term; or
1250 (B) an indeterminate term; and
1251 (ii) consideration.
- 1252 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
1253 amount of consideration may be increased or decreased by reference to the amount realized
1254 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
1255 Code.
- 1256 (c) "Lease" or "rental" does not include:
1257 (i) a transfer of possession or control of property under a security agreement or
1258 deferred payment plan that requires the transfer of title upon completion of the required
1259 payments;
1260 (ii) a transfer of possession or control of property under an agreement that requires the
1261 transfer of title:
1262 (A) upon completion of required payments; and
1263 (B) if the payment of an option price does not exceed the greater of:
1264 (I) \$100; or
1265 (II) 1% of the total required payments; or
1266 (iii) providing tangible personal property along with an operator for a fixed period of
1267 time or an indeterminate period of time if the operator is necessary for equipment to perform as
1268 designed.
- 1269 (d) For purposes of Subsection (60)(c)(iii), an operator is necessary for equipment to
1270 perform as designed if the operator's duties exceed the:
1271 (i) set-up of tangible personal property;
1272 (ii) maintenance of tangible personal property; or

- 1273 (iii) inspection of tangible personal property.
- 1274 (61) "Lesson" means a fixed period of time for the duration of which a trained
1275 instructor:
- 1276 (a) is present with a student in person or by video; and
- 1277 (b) actively instructs the student, including by providing observation or feedback.
- 1278 (62) "Life science establishment" means an establishment in this state that is classified
1279 under the following NAICS codes of the 2007 North American Industry Classification System
1280 of the federal Executive Office of the President, Office of Management and Budget:
- 1281 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;
- 1282 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus
1283 Manufacturing; or
- 1284 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.
- 1285 (63) "Life science research and development facility" means a facility owned, leased,
1286 or rented by a life science establishment if research and development is performed in 51% or
1287 more of the total area of the facility.
- 1288 (64) "Load and leave" means delivery to a purchaser by use of a tangible storage media
1289 if the tangible storage media is not physically transferred to the purchaser.
- 1290 (65) "Local taxing jurisdiction" means a:
- 1291 (a) county that is authorized to impose an agreement sales and use tax;
- 1292 (b) city that is authorized to impose an agreement sales and use tax; or
- 1293 (c) town that is authorized to impose an agreement sales and use tax.
- 1294 (66) "Manufactured home" means the same as that term is defined in Section
1295 15A-1-302.
- 1296 (67) "Manufacturing facility" means:
- 1297 (a) an establishment described in:
- 1298 (i) SIC Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of
1299 the federal Executive Office of the President, Office of Management and Budget; or
- 1300 (ii) a NAICS code within NAICS Sector 31-33, Manufacturing, of the 2017 North
1301 American Industry Classification System of the federal Executive Office of the President,
1302 Office of Management and Budget;
- 1303 (b) a scrap recycler if:

1304 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
1305 one or more of the following items into prepared grades of processed materials for use in new
1306 products:

- 1307 (A) iron;
- 1308 (B) steel;
- 1309 (C) nonferrous metal;
- 1310 (D) paper;
- 1311 (E) glass;
- 1312 (F) plastic;
- 1313 (G) textile; or
- 1314 (H) rubber; and

1315 (ii) the new products under Subsection (66)(b)(i) would otherwise be made with
1316 nonrecycled materials; or

1317 (c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is
1318 placed in service on or after May 1, 2006.

1319 (68) (a) "Marketplace" means a physical or electronic place, platform, or forum where
1320 tangible personal property, a product transferred electronically, or a service is offered for sale.

1321 (b) "Marketplace" includes a store, a booth, an Internet website, a catalog, or a
1322 dedicated sales software application.

1323 (69) (a) "Marketplace facilitator" means a person, including an affiliate of the person,
1324 that enters into a contract, an agreement, or otherwise with sellers, for consideration, to
1325 facilitate the sale of a seller's product through a marketplace that the person owns, operates, or
1326 controls and that directly or indirectly:

1327 (i) does any of the following:

1328 (A) lists, makes available, or advertises tangible personal property, a product
1329 transferred electronically, or a service for sale by a marketplace seller on a marketplace that the
1330 person owns, operates, or controls;

1331 (B) facilitates the sale of a marketplace seller's tangible personal property, product
1332 transferred electronically, or service by transmitting or otherwise communicating an offer or
1333 acceptance of a retail sale between the marketplace seller and a purchaser using the
1334 marketplace;

1335 (C) owns, rents, licenses, makes available, or operates any electronic or physical
1336 infrastructure or any property, process, method, copyright, trademark, or patent that connects a
1337 marketplace seller to a purchaser for the purpose of making a retail sale of tangible personal
1338 property, a product transferred electronically, or a service;

1339 (D) provides a marketplace for making, or otherwise facilitates, a retail sale of tangible
1340 personal property, a product transferred electronically, or a service, regardless of ownership or
1341 control of the tangible personal property, the product transferred electronically, or the service
1342 that is the subject of the retail sale;

1343 (E) provides software development or research and development activities related to
1344 any activity described in this Subsection (69)(a)(i), if the software development or research and
1345 development activity is directly related to the person's marketplace;

1346 (F) provides or offers fulfillment or storage services for a marketplace seller;

1347 (G) sets prices for the sale of tangible personal property, a product transferred
1348 electronically, or a service by a marketplace seller;

1349 (H) provides or offers customer service to a marketplace seller or a marketplace seller's
1350 purchaser or accepts or assists with taking orders, returns, or exchanges of tangible personal
1351 property, a product transferred electronically, or a service sold by a marketplace seller on the
1352 person's marketplace; or

1353 (I) brands or otherwise identifies sales as those of the person; and

1354 (ii) does any of the following:

1355 (A) collects the sales price or purchase price of a retail sale of tangible personal
1356 property, a product transferred electronically, or a service;

1357 (B) provides payment processing services for a retail sale of tangible personal property,
1358 a product transferred electronically, or a service;

1359 (C) charges, collects, or otherwise receives a selling fee, listing fee, referral fee, closing
1360 fee, a fee for inserting or making available tangible personal property, a product transferred
1361 electronically, or a service on the person's marketplace, or other consideration for the
1362 facilitation of a retail sale of tangible personal property, a product transferred electronically, or
1363 a service, regardless of ownership or control of the tangible personal property, the product
1364 transferred electronically, or the service that is the subject of the retail sale;

1365 (D) through terms and conditions, an agreement, or another arrangement with a third

1366 person, collects payment from a purchase for a retail sale of tangible personal property, a
1367 product transferred electronically, or a service and transmits that payment to the marketplace
1368 seller, regardless of whether the third person receives compensation or other consideration in
1369 exchange for the service; or

1370 (E) provides a virtual currency for a purchaser to use to purchase tangible personal
1371 property, a product transferred electronically, or service offered for sale.

1372 (b) "Marketplace facilitator" does not include:

1373 (i) a person that only provides payment processing services; or

1374 (ii) a person described in Subsection (69)(a) to the extent the person is facilitating a
1375 sale for a seller that is a restaurant as defined in Section 59-12-602.

1376 (70) "Marketplace seller" means a seller that makes one or more retail sales through a
1377 marketplace that a marketplace facilitator owns, operates, or controls, regardless of whether the
1378 seller is required to be registered to collect and remit the tax under this part.

1379 (71) "Member of the immediate family of the producer" means a person who is related
1380 to a producer described in Subsection 59-12-104(20)(a) as a:

1381 (a) child or stepchild, regardless of whether the child or stepchild is:

1382 (i) an adopted child or adopted stepchild; or

1383 (ii) a foster child or foster stepchild;

1384 (b) grandchild or stepgrandchild;

1385 (c) grandparent or stepgrandparent;

1386 (d) nephew or stepnephew;

1387 (e) niece or stepniece;

1388 (f) parent or stepparent;

1389 (g) sibling or stepsibling;

1390 (h) spouse;

1391 (i) person who is the spouse of a person described in Subsections (71)(a) through (g);

1392 or

1393 (j) person similar to a person described in Subsections (71)(a) through (i) as

1394 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah

1395 Administrative Rulemaking Act.

1396 (72) "Mobile home" means the same as that term is defined in Section 15A-1-302.

(73) "Mobile telecommunications service" means the same as that term is defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

(74) (a) "Mobile wireless service" means a telecommunications service, regardless of the technology used, if:

(i) the origination point of the conveyance, routing, or transmission is not fixed;

(ii) the termination point of the conveyance, routing, or transmission is not fixed; or

(iii) the origination point described in Subsection (74)(a)(i) and the termination point described in Subsection (74)(a)(ii) are not fixed.

(b) "Mobile wireless service" includes a telecommunications service that is provided by a commercial mobile radio service provider.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule define "commercial mobile radio service provider."

(75) (a) ~~[Except as provided in Subsection (75)(c), "mobility"]~~ "Mobility enhancing equipment" means equipment that is:

(i) primarily and customarily used to provide or increase the ability to move from one place to another;

(ii) appropriate for use in a:

(A) home; or

(B) motor vehicle; and

(iii) not generally used by persons with normal mobility.

(b) "Mobility enhancing equipment" includes parts used in the repair or replacement of the equipment described in Subsection (75)(a).

(c) "Mobility enhancing equipment" does not include:

(i) a motor vehicle;

(ii) equipment on a motor vehicle if that equipment is normally provided by the motor vehicle manufacturer;

(iii) durable medical equipment; or

(iv) a prosthetic device.

(76) "Model 1 seller" means a seller registered under the agreement that has selected a certified service provider as the seller's agent to perform the seller's sales and use tax functions for agreement sales and use taxes, as outlined in the contract between the governing board of

1428 the agreement and the certified service provider, other than the seller's obligation under Section
1429 59-12-124 to remit a tax on the seller's own purchases.

1430 (77) "Model 2 seller" means a seller registered under the agreement that:

1431 (a) except as provided in Subsection (77)(b), has selected a certified automated system
1432 to perform the seller's sales tax functions for agreement sales and use taxes; and

1433 (b) retains responsibility for remitting all of the sales tax:

1434 (i) collected by the seller; and

1435 (ii) to the appropriate local taxing jurisdiction.

1436 (78) (a) Subject to Subsection (78)(b), "model 3 seller" means a seller registered under
1437 the agreement that has:

1438 (i) sales in at least five states that are members of the agreement;

1439 (ii) total annual sales revenues of at least \$500,000,000;

1440 (iii) a proprietary system that calculates the amount of tax:

1441 (A) for an agreement sales and use tax; and

1442 (B) due to each local taxing jurisdiction; and

1443 (iv) entered into a performance agreement with the governing board of the agreement.

1444 (b) ~~[For purposes of Subsection (78)(a), "model]~~ "Model 3 seller" includes an affiliated
1445 group of sellers using the same proprietary system.

1446 (79) "Model 4 seller" means a seller that is registered under the agreement and is not a
1447 model 1 seller, model 2 seller, or model 3 seller.

1448 (80) "Modular home" means a modular unit as defined in Section 15A-1-302.

1449 (81) "Motor vehicle" means the same as that term is defined in Section 41-1a-102.

1450 (82) "Oil sands" means impregnated bituminous sands that:

1451 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with
1452 other hydrocarbons, or otherwise treated;

1453 (b) yield mixtures of liquid hydrocarbon; and

1454 (c) require further processing other than mechanical blending before becoming finished
1455 petroleum products.

1456 (83) "Oil shale" means a group of fine black to dark brown shales containing kerogen
1457 material that yields petroleum upon heating and distillation.

1458 (84) "Optional computer software maintenance contract" means a computer software

1459 maintenance contract that a customer is not obligated to purchase as a condition to the retail
1460 sale of computer software.

1461 (85) (a) "Other fuels" means products that burn independently to produce heat or
1462 energy.

1463 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
1464 personal property.

1465 (86) (a) "Paging service" means a telecommunications service that provides
1466 transmission of a coded radio signal for the purpose of activating a specific pager.

1467 (b) For purposes of Subsection (86)(a), the transmission of a coded radio signal
1468 includes a transmission by message or sound.

1469 (87) "Pawn transaction" means the same as that term is defined in Section 13-32a-102.

1470 ~~[(87)]~~ (88) "Pawnbroker" means the same as that term is defined in Section
1471 13-32a-102.

1472 ~~[(88) "Pawn transaction" means the same as that term is defined in Section~~
1473 ~~13-32a-102.]~~

1474 (89) (a) "Permanently attached to real property" means that for tangible personal
1475 property attached to real property:

1476 (i) the attachment of the tangible personal property to the real property:

1477 (A) is essential to the use of the tangible personal property; and

1478 (B) suggests that the tangible personal property will remain attached to the real
1479 property in the same place over the useful life of the tangible personal property; or

1480 (ii) if the tangible personal property is detached from the real property, the detachment
1481 would:

1482 (A) cause substantial damage to the tangible personal property; or

1483 (B) require substantial alteration or repair of the real property to which the tangible
1484 personal property is attached.

1485 (b) "Permanently attached to real property" includes:

1486 (i) the attachment of an accessory to the tangible personal property if the accessory is:

1487 (A) essential to the operation of the tangible personal property; and

1488 (B) attached only to facilitate the operation of the tangible personal property;

1489 (ii) a temporary detachment of tangible personal property from real property for a

1490 repair or renovation if the repair or renovation is performed where the tangible personal
1491 property and real property are located; or
1492 (iii) property attached to oil, gas, or water pipelines, except for the property listed in
1493 Subsection (89)(c)(iii) or (iv).
1494 (c) "Permanently attached to real property" does not include:
1495 (i) the attachment of portable or movable tangible personal property to real property if
1496 that portable or movable tangible personal property is attached to real property only for:
1497 (A) convenience;
1498 (B) stability; or
1499 (C) for an obvious temporary purpose;
1500 (ii) the detachment of tangible personal property from real property except for the
1501 detachment described in Subsection (89)(b)(ii);
1502 (iii) an attachment of the following tangible personal property to real property if the
1503 attachment to real property is only through a line that supplies water, electricity, gas,
1504 telecommunications, cable, or supplies a similar item as determined by the commission by rule
1505 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:
1506 (A) a computer;
1507 (B) a telephone;
1508 (C) a television; or
1509 (D) tangible personal property similar to Subsections (89)(c)(iii)(A) through (C) as
1510 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
1511 Administrative Rulemaking Act; or
1512 (iv) an item listed in Subsection (130)(c).
1513 (90) "Person" includes any individual, firm, partnership, joint venture, association,
1514 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
1515 municipality, district, or other local governmental entity of the state, or any group or
1516 combination acting as a unit.
1517 (91) "Place of primary use":
1518 (a) for telecommunications service other than mobile telecommunications service,
1519 means the street address representative of where the customer's use of the telecommunications
1520 service primarily occurs, which shall be:

1521 (i) the residential street address of the customer; or
1522 (ii) the primary business street address of the customer; or
1523 (b) for mobile telecommunications service, means the same as that term is defined in
1524 the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

1525 (92) (a) "Postpaid calling service" means a telecommunications service a person
1526 obtains by making a payment on a call-by-call basis:

1527 (i) through the use of a:

1528 (A) bank card;

1529 (B) credit card;

1530 (C) debit card; or

1531 (D) travel card; or

1532 (ii) by a charge made to a telephone number that is not associated with the origination
1533 or termination of the telecommunications service.

1534 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling
1535 service, that would be a prepaid wireless calling service if the service were exclusively a
1536 telecommunications service.

1537 (93) "Postproduction" means an activity related to the finishing or duplication of a
1538 medium described in Subsection 59-12-104(54)(a).

1539 (94) "Prepaid calling service" means a telecommunications service:

1540 (a) that allows a purchaser access to telecommunications service that is exclusively
1541 telecommunications service;

1542 (b) that:

1543 (i) is paid for in advance; and

1544 (ii) enables the origination of a call using an:

1545 (A) access number; or

1546 (B) authorization code;

1547 (c) that is dialed:

1548 (i) manually; or

1549 (ii) electronically; and

1550 (d) sold in predetermined units or dollars that decline:

1551 (i) by a known amount; and

- 1552 (ii) with use.
- 1553 (95) "Prepaid wireless calling service" means a telecommunications service:
- 1554 (a) that provides the right to utilize:
- 1555 (i) mobile wireless service; and
- 1556 (ii) other service that is not a telecommunications service, including:
- 1557 (A) the download of a product transferred electronically;
- 1558 (B) a content service; or
- 1559 (C) an ancillary service;
- 1560 (b) that:
- 1561 (i) is paid for in advance; and
- 1562 (ii) enables the origination of a call using an:
- 1563 (A) access number; or
- 1564 (B) authorization code;
- 1565 (c) that is dialed:
- 1566 (i) manually; or
- 1567 (ii) electronically; and
- 1568 (d) sold in predetermined units or dollars that decline:
- 1569 (i) by a known amount; and
- 1570 (ii) with use.
- 1571 (96) (a) "Prepared food" means:
- 1572 (i) food:
- 1573 (A) sold in a heated state; or
- 1574 (B) heated by a seller;
- 1575 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 1576 item; or
- 1577 (iii) except as provided in Subsection (96)(c), food sold with an eating utensil provided
- 1578 by the seller, including a:
- 1579 (A) plate;
- 1580 (B) knife;
- 1581 (C) fork;
- 1582 (D) spoon;

- 1583 (E) glass;
1584 (F) cup;
1585 (G) napkin; or
1586 (H) straw.
- 1587 (b) "Prepared food" does not include:
1588 (i) food that a seller only:
1589 (A) cuts;
1590 (B) repackages; or
1591 (C) pasteurizes; or
1592 (ii) (A) the following:
1593 (I) raw egg;
1594 (II) raw fish;
1595 (III) raw meat;
1596 (IV) raw poultry; or
1597 (V) a food containing an item described in Subsections (96)(b)(ii)(A)(I) through (IV);
1598 and
1599 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
1600 Food and Drug Administration's Food Code that a consumer cook the items described in
1601 Subsection (96)(b)(ii)(A) to prevent food borne illness; or
1602 (iii) the following if sold without eating utensils provided by the seller:
1603 (A) food and food ingredients sold by a seller if the seller's proper primary
1604 classification under the 2002 North American Industry Classification System of the federal
1605 Executive Office of the President, Office of Management and Budget, is manufacturing in
1606 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
1607 Manufacturing;
1608 (B) food and food ingredients sold in an unheated state:
1609 (I) by weight or volume; and
1610 (II) as a single item; or
1611 (C) a bakery item, including:
1612 (I) a bagel;
1613 (II) a bar;

- 1614 (III) a biscuit;
- 1615 (IV) bread;
- 1616 (V) a bun;
- 1617 (VI) a cake;
- 1618 (VII) a cookie;
- 1619 (VIII) a croissant;
- 1620 (IX) a danish;
- 1621 (X) a donut;
- 1622 (XI) a muffin;
- 1623 (XII) a pastry;
- 1624 (XIII) a pie;
- 1625 (XIV) a roll;
- 1626 (XV) a tart;
- 1627 (XVI) a torte; or
- 1628 (XVII) a tortilla.

1629 (c) An eating utensil provided by the seller does not include the following used to
1630 transport the food:

- 1631 (i) a container; or
- 1632 (ii) packaging.

1633 (97) "Prescription" means an order, formula, or recipe that is issued:

- 1634 (a) (i) orally;
- 1635 (ii) in writing;
- 1636 (iii) electronically; or
- 1637 (iv) by any other manner of transmission; and

1638 (b) by a licensed practitioner authorized by the laws of a state.

1639 (98) (a) [~~Except as provided in Subsection (98)(b)(ii) or (iii), "prewritten"~~] "Prewritten
1640 computer software" means computer software that is not designed and developed:

- 1641 (i) by the author or other creator of the computer software; and
- 1642 (ii) to the specifications of a specific purchaser.

1643 (b) "Prewritten computer software" includes:

- 1644 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer

1645 software is not designed and developed:

1646 (A) by the author or other creator of the computer software; and

1647 (B) to the specifications of a specific purchaser;

1648 (ii) computer software designed and developed by the author or other creator of the

1649 computer software to the specifications of a specific purchaser if the computer software is sold

1650 to a person other than the purchaser; or

1651 (iii) except as provided in Subsection (98)(c), prewritten computer software or a

1652 prewritten portion of prewritten computer software:

1653 (A) that is modified or enhanced to any degree; and

1654 (B) if the modification or enhancement described in Subsection (98)(b)(iii)(A) is

1655 designed and developed to the specifications of a specific purchaser.

1656 (c) "Prewritten computer software" does not include a modification or enhancement

1657 described in Subsection (98)(b)(iii) if the charges for the modification or enhancement are:

1658 (i) reasonable; and

1659 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), separately stated on the

1660 invoice or other statement of price provided to the purchaser at the time of sale or later, as

1661 demonstrated by:

1662 (A) the books and records the seller keeps at the time of the transaction in the regular

1663 course of business, including books and records the seller keeps at the time of the transaction in

1664 the regular course of business for nontax purposes;

1665 (B) a preponderance of the facts and circumstances at the time of the transaction; and

1666 (C) the understanding of all of the parties to the transaction.

1667 (99) (a) "Private communications service" means a telecommunications service:

1668 (i) that entitles a customer to exclusive or priority use of one or more communications

1669 channels between or among termination points; and

1670 (ii) regardless of the manner in which the one or more communications channels are

1671 connected.

1672 (b) "Private communications service" includes the following provided in connection

1673 with the use of one or more communications channels:

1674 (i) an extension line;

1675 (ii) a station;

1676 (iii) switching capacity; or
1677 (iv) another associated service that is provided in connection with the use of one or
1678 more communications channels as defined in Section 59-12-215.

1679 (100) (a) [~~Except as provided in Subsection (100)(b), "product"~~] "Product transferred
1680 electronically" means a product transferred electronically that would be subject to a tax under
1681 this chapter if that product was transferred in a manner other than electronically.

1682 (b) "Product transferred electronically" does not include:
1683 (i) an ancillary service;
1684 (ii) computer software; or
1685 (iii) a telecommunications service.

1686 (101) (a) "Prosthetic device" means a device that is worn on or in the body to:
1687 (i) artificially replace a missing portion of the body;
1688 (ii) prevent or correct a physical deformity or physical malfunction; or
1689 (iii) support a weak or deformed portion of the body.

1690 (b) "Prosthetic device" includes:
1691 (i) parts used in the repairs or renovation of a prosthetic device;
1692 (ii) replacement parts for a prosthetic device;
1693 (iii) a dental prosthesis; or
1694 (iv) a hearing aid.

1695 (c) "Prosthetic device" does not include:
1696 (i) corrective eyeglasses; or
1697 (ii) contact lenses.

1698 (102) (a) "Protective equipment" means an item:
1699 (i) for human wear; and
1700 (ii) that is:
1701 (A) designed as protection:
1702 (I) to the wearer against injury or disease; or
1703 (II) against damage or injury of other persons or property; and
1704 (B) not suitable for general use.

1705 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1706 commission shall make rules:

1707 (i) listing the items that constitute "protective equipment"; and
1708 (ii) that are consistent with the list of items that constitute "protective equipment"
1709 under the agreement.

1710 (103) (a) For purposes of Subsection 59-12-104(41), "publication" means any written
1711 or printed matter, other than a photocopy:

1712 (i) regardless of:
1713 (A) characteristics;
1714 (B) copyright;
1715 (C) form;
1716 (D) format;
1717 (E) method of reproduction; or
1718 (F) source; and
1719 (ii) made available in printed or electronic format.

1720 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1721 commission may by rule define the term "photocopy."

1722 (104) (a) "Purchase price" and "sales price" mean the total amount of consideration:
1723 (i) valued in money; and
1724 (ii) for which tangible personal property, a product transferred electronically, or
1725 services are:

1726 (A) sold;
1727 (B) leased; or
1728 (C) rented.

1729 (b) "Purchase price" and "sales price" include:
1730 (i) the seller's cost of the tangible personal property, a product transferred
1731 electronically, or services sold;
1732 (ii) expenses of the seller, including:
1733 (A) the cost of materials used;
1734 (B) a labor cost;
1735 (C) a service cost;
1736 (D) interest;
1737 (E) a loss;

1738 (F) the cost of transportation to the seller; or
1739 (G) a tax imposed on the seller;
1740 (iii) a charge by the seller for any service necessary to complete the sale; or
1741 (iv) consideration a seller receives from a person other than the purchaser if:
1742 (A) (I) the seller actually receives consideration from a person other than the purchaser;
1743 and
1744 (II) the consideration described in Subsection (104)(b)(iv)(A)(I) is directly related to a
1745 price reduction or discount on the sale;
1746 (B) the seller has an obligation to pass the price reduction or discount through to the
1747 purchaser;
1748 (C) the amount of the consideration attributable to the sale is fixed and determinable by
1749 the seller at the time of the sale to the purchaser; and
1750 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the
1751 seller to claim a price reduction or discount; and
1752 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,
1753 coupon, or other documentation with the understanding that the person other than the seller
1754 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;
1755 (II) the purchaser identifies that purchaser to the seller as a member of a group or
1756 organization allowed a price reduction or discount, except that a preferred customer card that is
1757 available to any patron of a seller does not constitute membership in a group or organization
1758 allowed a price reduction or discount; or
1759 (III) the price reduction or discount is identified as a third party price reduction or
1760 discount on the:
1761 (Aa) invoice the purchaser receives; or
1762 (Bb) certificate, coupon, or other documentation the purchaser presents.
1763 (c) "Purchase price" and "sales price" do not include:
1764 (i) a discount:
1765 (A) in a form including:
1766 (I) cash;
1767 (II) term; or
1768 (III) coupon;

- 1769 (B) that is allowed by a seller;
- 1770 (C) taken by a purchaser on a sale; and
- 1771 (D) that is not reimbursed by a third party; or
- 1772 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately
- 1773 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of
- 1774 sale or later, as demonstrated by the books and records the seller keeps at the time of the
- 1775 transaction in the regular course of business, including books and records the seller keeps at the
- 1776 time of the transaction in the regular course of business for nontax purposes, by a
- 1777 preponderance of the facts and circumstances at the time of the transaction, and by the
- 1778 understanding of all of the parties to the transaction:
- 1779 (A) the following from credit extended on the sale of tangible personal property or
- 1780 services:
- 1781 (I) a carrying charge;
- 1782 (II) a financing charge; or
- 1783 (III) an interest charge;
- 1784 (B) a delivery charge;
- 1785 (C) an installation charge;
- 1786 (D) a manufacturer rebate on a motor vehicle; or
- 1787 (E) a tax or fee legally imposed directly on the consumer.
- 1788 (105) "Purchaser" means a person to whom:
- 1789 (a) a sale of tangible personal property is made;
- 1790 (b) a product is transferred electronically; or
- 1791 (c) a service is furnished.
- 1792 (106) "Qualifying data center" means a data center facility that:
- 1793 (a) houses a group of networked server computers in one physical location in order to
- 1794 disseminate, manage, and store data and information;
- 1795 (b) is located in the state;
- 1796 (c) is a new operation constructed on or after July 1, 2016;
- 1797 (d) consists of one or more buildings that total 150,000 or more square feet;
- 1798 (e) is owned or leased by:
- 1799 (i) the operator of the data center facility; or

1800 (ii) a person under common ownership, as defined in Section 59-7-101, of the operator
1801 of the data center facility; and

1802 (f) is located on one or more parcels of land that are owned or leased by:

1803 (i) the operator of the data center facility; or

1804 (ii) a person under common ownership, as defined in Section 59-7-101, of the operator
1805 of the data center facility.

1806 (107) "Regularly rented" means:

1807 (a) rented to a guest for value three or more times during a calendar year; or

1808 (b) advertised or held out to the public as a place that is regularly rented to guests for
1809 value.

1810 (108) "Rental" means the same as that term is defined in Subsection (60).

1811 (109) (a) [~~Except as provided in Subsection (109)(b), "repairs"~~] "Repairs" or renovations
1812 of tangible personal property" means:

1813 (i) a repair or renovation of tangible personal property that is not permanently attached
1814 to real property; or

1815 (ii) attaching tangible personal property or a product transferred electronically to other
1816 tangible personal property or detaching tangible personal property or a product transferred
1817 electronically from other tangible personal property if:

1818 (A) the other tangible personal property to which the tangible personal property or
1819 product transferred electronically is attached or from which the tangible personal property or
1820 product transferred electronically is detached is not permanently attached to real property; and

1821 (B) the attachment of tangible personal property or a product transferred electronically
1822 to other tangible personal property or detachment of tangible personal property or a product
1823 transferred electronically from other tangible personal property is made in conjunction with a
1824 repair or replacement of tangible personal property or a product transferred electronically.

1825 (b) "Repairs or renovations of tangible personal property" does not include:

1826 (i) attaching prewritten computer software to other tangible personal property if the
1827 other tangible personal property to which the prewritten computer software is attached is not
1828 permanently attached to real property; or

1829 (ii) detaching prewritten computer software from other tangible personal property if the
1830 other tangible personal property from which the prewritten computer software is detached is

1831 not permanently attached to real property.

1832 (110) "Research and development" means the process of inquiry or experimentation
1833 aimed at the discovery of facts, devices, technologies, or applications and the process of
1834 preparing those devices, technologies, or applications for marketing.

1835 (111) (a) "Residential telecommunications services" means a telecommunications
1836 service or an ancillary service that is provided to an individual for personal use:

1837 (i) at a residential address; or

1838 (ii) at an institution, including a nursing home or a school, if the telecommunications
1839 service or ancillary service is provided to and paid for by the individual residing at the
1840 institution rather than the institution.

1841 (b) For purposes of Subsection (111)(a)(i), a residential address includes an:

1842 (i) apartment; or

1843 (ii) other individual dwelling unit.

1844 (112) "Residential use" means the use in or around a home, apartment building,
1845 sleeping quarters, and similar facilities or accommodations.

1846 (113) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
1847 than:

1848 (a) resale;

1849 (b) sublease; or

1850 (c) subrent.

1851 (114) (a) "Retailer" means any person, unless prohibited by the Constitution of the
1852 United States or federal law, that is engaged in a regularly organized business in tangible
1853 personal property or any other taxable transaction under Subsection 59-12-103(1), and who is
1854 selling to the user or consumer and not for resale.

1855 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
1856 engaged in the business of selling to users or consumers within the state.

1857 (115) (a) "Sale" means any transfer of title, exchange, or barter, conditional or
1858 otherwise, in any manner, of tangible personal property or any other taxable transaction under
1859 Subsection 59-12-103(1), for consideration.

1860 (b) "Sale" includes:

1861 (i) installment and credit sales;

- 1862 (ii) any closed transaction constituting a sale;
- 1863 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 1864 chapter;
- 1865 (iv) any transaction if the possession of property is transferred but the seller retains the
- 1866 title as security for the payment of the price; and
- 1867 (v) any transaction under which right to possession, operation, or use of any article of
- 1868 tangible personal property is granted under a lease or contract and the transfer of possession
- 1869 would be taxable if an outright sale were made.
- 1870 (116) "Sale at retail" means the same as that term is defined in Subsection (113).
- 1871 (117) "Sale-leaseback transaction" means a transaction by which title to tangible
- 1872 personal property or a product transferred electronically that is subject to a tax under this
- 1873 chapter is transferred:
- 1874 (a) by a purchaser-lessee;
- 1875 (b) to a lessor;
- 1876 (c) for consideration; and
- 1877 (d) if:
- 1878 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
- 1879 of the tangible personal property or product transferred electronically;
- 1880 (ii) the sale of the tangible personal property or product transferred electronically to the
- 1881 lessor is intended as a form of financing:
- 1882 (A) for the tangible personal property or product transferred electronically; and
- 1883 (B) to the purchaser-lessee; and
- 1884 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
- 1885 is required to:
- 1886 (A) capitalize the tangible personal property or product transferred electronically for
- 1887 financial reporting purposes; and
- 1888 (B) account for the lease payments as payments made under a financing arrangement.
- 1889 (118) "Sales price" means the same as that term is defined in Subsection (104).
- 1890 (119) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
- 1891 amounts charged by a school:
- 1892 (i) sales that are directly related to the school's educational functions or activities

1893 including:

1894 (A) the sale of:

1895 (I) textbooks;

1896 (II) textbook fees;

1897 (III) laboratory fees;

1898 (IV) laboratory supplies; or

1899 (V) safety equipment;

1900 (B) the sale of a uniform, protective equipment, or sports or recreational equipment

1901 that:

1902 (I) a student is specifically required to wear as a condition of participation in a

1903 school-related event or school-related activity; and

1904 (II) is not readily adaptable to general or continued usage to the extent that it takes the

1905 place of ordinary clothing;

1906 (C) sales of the following if the net or gross revenues generated by the sales are

1907 deposited into a school district fund or school fund dedicated to school meals:

1908 (I) food and food ingredients; or

1909 (II) prepared food; or

1910 (D) transportation charges for official school activities; or

1911 (ii) amounts paid to or amounts charged by a school for admission to a school-related

1912 event or school-related activity.

1913 (b) "Sales relating to schools" does not include:

1914 (i) bookstore sales of items that are not educational materials or supplies;

1915 (ii) except as provided in Subsection (119)(a)(i)(B):

1916 (A) clothing;

1917 (B) clothing accessories or equipment;

1918 (C) protective equipment; or

1919 (D) sports or recreational equipment; or

1920 (iii) amounts paid to or amounts charged by a school for admission to a school-related

1921 event or school-related activity if the amounts paid or charged are passed through to a person:

1922 (A) other than a:

1923 (I) school;

1924 (II) nonprofit organization authorized by a school board or a governing body of a
1925 private school to organize and direct a competitive secondary school activity; or
1926 (III) nonprofit association authorized by a school board or a governing body of a
1927 private school to organize and direct a competitive secondary school activity; and
1928 (B) that is required to collect sales and use taxes under this chapter.
1929 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1930 commission may make rules defining the term "passed through."
1931 (120) For purposes of this section and Section 59-12-104, "school" means:
1932 (a) an elementary school or a secondary school that:
1933 (i) is a:
1934 (A) public school; or
1935 (B) private school; and
1936 (ii) provides instruction for one or more grades kindergarten through 12; or
1937 (b) a public school district.
1938 (121) (a) "Seller" means a person that makes a sale, lease, or rental of:
1939 (i) tangible personal property;
1940 (ii) a product transferred electronically; or
1941 (iii) a service.
1942 (b) "Seller" includes a marketplace facilitator.
1943 (122) (a) "Semiconductor fabricating, processing, research, or development materials"
1944 means tangible personal property or a product transferred electronically if the tangible personal
1945 property or product transferred electronically is:
1946 (i) used primarily in the process of:
1947 (A) (I) manufacturing a semiconductor;
1948 (II) fabricating a semiconductor; or
1949 (III) research or development of a:
1950 (Aa) semiconductor; or
1951 (Bb) semiconductor manufacturing process; or
1952 (B) maintaining an environment suitable for a semiconductor; or
1953 (ii) consumed primarily in the process of:
1954 (A) (I) manufacturing a semiconductor;

1955 (II) fabricating a semiconductor; or
 1956 (III) research or development of a:
 1957 (Aa) semiconductor; or
 1958 (Bb) semiconductor manufacturing process; or
 1959 (B) maintaining an environment suitable for a semiconductor.
 1960 (b) "Semiconductor fabricating, processing, research, or development materials"
 1961 includes:
 1962 (i) parts used in the repairs or renovations of tangible personal property or a product
 1963 transferred electronically described in Subsection (122)(a); or
 1964 (ii) a chemical, catalyst, or other material used to:
 1965 (A) produce or induce in a semiconductor a:
 1966 (I) chemical change; or
 1967 (II) physical change;
 1968 (B) remove impurities from a semiconductor; or
 1969 (C) improve the marketable condition of a semiconductor.
 1970 (123) "Senior citizen center" means a facility having the primary purpose of providing
 1971 services to the aged as defined in Section 62A-3-101.
 1972 (124) (a) [~~Subject to Subsections (124)(b) and (c), "short-term"~~] "Short-term lodging
 1973 consumable" means tangible personal property that:
 1974 (i) a business that provides accommodations and services described in Subsection
 1975 59-12-103(1)(i) purchases as part of a transaction to provide the accommodations and services
 1976 to a purchaser;
 1977 (ii) is intended to be consumed by the purchaser; and
 1978 (iii) is:
 1979 (A) included in the purchase price of the accommodations and services; and
 1980 (B) not separately stated on an invoice, bill of sale, or other similar document provided
 1981 to the purchaser.
 1982 (b) "Short-term lodging consumable" includes:
 1983 (i) a beverage;
 1984 (ii) a brush or comb;
 1985 (iii) a cosmetic;

- 1986 (iv) a hair care product;
1987 (v) lotion;
1988 (vi) a magazine;
1989 (vii) makeup;
1990 (viii) a meal;
1991 (ix) mouthwash;
1992 (x) nail polish remover;
1993 (xi) a newspaper;
1994 (xii) a notepad;
1995 (xiii) a pen;
1996 (xiv) a pencil;
1997 (xv) a razor;
1998 (xvi) saline solution;
1999 (xvii) a sewing kit;
2000 (xviii) shaving cream;
2001 (xix) a shoe shine kit;
2002 (xx) a shower cap;
2003 (xxi) a snack item;
2004 (xxii) soap;
2005 (xxiii) toilet paper;
2006 (xxiv) a toothbrush;
2007 (xxv) toothpaste; or
2008 (xxvi) an item similar to Subsections (124)(b)(i) through (xxv) as the commission may
2009 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2010 Rulemaking Act.
- 2011 (c) "Short-term lodging consumable" does not include:
2012 (i) tangible personal property that is cleaned or washed to allow the tangible personal
2013 property to be reused; or
2014 (ii) a product transferred electronically.
- 2015 (125) "Simplified electronic return" means the electronic return:
2016 (a) described in Section 318(C) of the agreement; and

- 2017 (b) approved by the governing board of the agreement.
- 2018 (126) "Solar energy" means the sun used as the sole source of energy for producing
- 2019 electricity.
- 2020 (127) (a) "Sports or recreational equipment" means an item:
- 2021 (i) designed for human use; and
- 2022 (ii) that is:
- 2023 (A) worn in conjunction with:
- 2024 (I) an athletic activity; or
- 2025 (II) a recreational activity; and
- 2026 (B) not suitable for general use.
- 2027 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2028 commission shall make rules:
- 2029 (i) listing the items that constitute "sports or recreational equipment"; and
- 2030 (ii) that are consistent with the list of items that constitute "sports or recreational
- 2031 equipment" under the agreement.
- 2032 (128) "State" means the state of Utah, its departments, and agencies.
- 2033 (129) "Storage" means any keeping or retention of tangible personal property or any
- 2034 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
- 2035 sale in the regular course of business.
- 2036 (130) (a) [~~Except as provided in Subsection (130)(d) or (e), "tangible"~~] "Tangible
- 2037 personal property" means personal property that:
- 2038 (i) may be:
- 2039 (A) seen;
- 2040 (B) weighed;
- 2041 (C) measured;
- 2042 (D) felt; or
- 2043 (E) touched; or
- 2044 (ii) is in any manner perceptible to the senses.
- 2045 (b) "Tangible personal property" includes:
- 2046 (i) electricity;
- 2047 (ii) water;

2048 (iii) gas;
2049 (iv) steam; or
2050 (v) prewritten computer software, regardless of the manner in which the prewritten
2051 computer software is transferred.

2052 (c) "Tangible personal property" includes the following regardless of whether the item
2053 is attached to real property:

2054 (i) a dishwasher;
2055 (ii) a dryer;
2056 (iii) a freezer;
2057 (iv) a microwave;
2058 (v) a refrigerator;
2059 (vi) a stove;
2060 (vii) a washer; or
2061 (viii) an item similar to Subsections (130)(c)(i) through (vii) as determined by the
2062 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2063 Rulemaking Act.

2064 (d) "Tangible personal property" does not include a product that is transferred
2065 electronically.

2066 (e) "Tangible personal property" does not include the following if attached to real
2067 property, regardless of whether the attachment to real property is only through a line that
2068 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
2069 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
2070 Rulemaking Act:

2071 (i) a hot water heater;
2072 (ii) a water filtration system; or
2073 (iii) a water softener system.

2074 (131) (a) "Telecommunications enabling or facilitating equipment, machinery, or
2075 software" means an item listed in Subsection (131)(b) if that item is purchased or leased
2076 primarily to enable or facilitate one or more of the following to function:

2077 (i) telecommunications switching or routing equipment, machinery, or software; or
2078 (ii) telecommunications transmission equipment, machinery, or software.

2079 (b) The following apply to Subsection (131)(a):

2080 (i) a pole;

2081 (ii) software;

2082 (iii) a supplementary power supply;

2083 (iv) temperature or environmental equipment or machinery;

2084 (v) test equipment;

2085 (vi) a tower; or

2086 (vii) equipment, machinery, or software that functions similarly to an item listed in

2087 Subsections (131)(b)(i) through (vi) as determined by the commission by rule made in

2088 accordance with Subsection (131)(c).

2089 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2090 commission may by rule define what constitutes equipment, machinery, or software that

2091 functions similarly to an item listed in Subsections (131)(b)(i) through (vi).

2092 (132) "Telecommunications equipment, machinery, or software required for 911

2093 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.

2094 Sec. 20.18.

2095 (133) "Telecommunications maintenance or repair equipment, machinery, or software"

2096 means equipment, machinery, or software purchased or leased primarily to maintain or repair

2097 one or more of the following, regardless of whether the equipment, machinery, or software is

2098 purchased or leased as a spare part or as an upgrade or modification to one or more of the

2099 following:

2100 (a) telecommunications enabling or facilitating equipment, machinery, or software;

2101 (b) telecommunications switching or routing equipment, machinery, or software; or

2102 (c) telecommunications transmission equipment, machinery, or software.

2103 (134) (a) "Telecommunications service" means the electronic conveyance, routing, or

2104 transmission of audio, data, video, voice, or any other information or signal to a point, or

2105 among or between points.

2106 (b) "Telecommunications service" includes:

2107 (i) an electronic conveyance, routing, or transmission with respect to which a computer

2108 processing application is used to act:

2109 (A) on the code, form, or protocol of the content;

2110 (B) for the purpose of electronic conveyance, routing, or transmission; and
2111 (C) regardless of whether the service:
2112 (I) is referred to as voice over Internet protocol service; or
2113 (II) is classified by the Federal Communications Commission as enhanced or value
2114 added;
2115 (ii) an 800 service;
2116 (iii) a 900 service;
2117 (iv) a fixed wireless service;
2118 (v) a mobile wireless service;
2119 (vi) a postpaid calling service;
2120 (vii) a prepaid calling service;
2121 (viii) a prepaid wireless calling service; or
2122 (ix) a private communications service.
2123 (c) "Telecommunications service" does not include:
2124 (i) advertising, including directory advertising;
2125 (ii) an ancillary service;
2126 (iii) a billing and collection service provided to a third party;
2127 (iv) a data processing and information service if:
2128 (A) the data processing and information service allows data to be:
2129 (I) (Aa) acquired;
2130 (Bb) generated;
2131 (Cc) processed;
2132 (Dd) retrieved; or
2133 (Ee) stored; and
2134 (II) delivered by an electronic transmission to a purchaser; and
2135 (B) the purchaser's primary purpose for the underlying transaction is the processed data
2136 or information;
2137 (v) installation or maintenance of the following on a customer's premises:
2138 (A) equipment; or
2139 (B) wiring;
2140 (vi) Internet access service;

- 2141 (vii) a paging service;
- 2142 (viii) a product transferred electronically, including:
- 2143 (A) music;
- 2144 (B) reading material;
- 2145 (C) a ring tone;
- 2146 (D) software; or
- 2147 (E) video;
- 2148 (ix) a radio and television audio and video programming service:
- 2149 (A) regardless of the medium; and
- 2150 (B) including:
- 2151 (I) furnishing conveyance, routing, or transmission of a television audio and video
- 2152 programming service by a programming service provider;
- 2153 (II) cable service as defined in 47 U.S.C. Sec. 522(6); or
- 2154 (III) audio and video programming services delivered by a commercial mobile radio
- 2155 service provider as defined in 47 C.F.R. Sec. 20.3;
- 2156 (x) a value-added nonvoice data service; or
- 2157 (xi) tangible personal property.
- 2158 (135) (a) "Telecommunications service provider" means a person that:
- 2159 (i) owns, controls, operates, or manages a telecommunications service; and
- 2160 (ii) engages in an activity described in Subsection (135)(a)(i) for the shared use with or
- 2161 resale to any person of the telecommunications service.
- 2162 (b) A person described in Subsection (135)(a) is a telecommunications service provider
- 2163 whether or not the Public Service Commission of Utah regulates:
- 2164 (i) that person; or
- 2165 (ii) the telecommunications service that the person owns, controls, operates, or
- 2166 manages.
- 2167 (136) (a) "Telecommunications switching or routing equipment, machinery, or
- 2168 software" means an item listed in Subsection (136)(b) if that item is purchased or leased
- 2169 primarily for switching or routing:
- 2170 (i) an ancillary service;
- 2171 (ii) data communications;

2172 (iii) voice communications; or

2173 (iv) telecommunications service.

2174 (b) The following apply to Subsection (136)(a):

2175 (i) a bridge;

2176 (ii) a computer;

2177 (iii) a cross connect;

2178 (iv) a modem;

2179 (v) a multiplexer;

2180 (vi) plug in circuitry;

2181 (vii) a router;

2182 (viii) software;

2183 (ix) a switch; or

2184 (x) equipment, machinery, or software that functions similarly to an item listed in

2185 Subsections (136)(b)(i) through (ix) as determined by the commission by rule made in

2186 accordance with Subsection (136)(c).

2187 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

2188 commission may by rule define what constitutes equipment, machinery, or software that

2189 functions similarly to an item listed in Subsections (136)(b)(i) through (ix).

2190 (137) (a) "Telecommunications transmission equipment, machinery, or software"

2191 means an item listed in Subsection (137)(b) if that item is purchased or leased primarily for

2192 sending, receiving, or transporting:

2193 (i) an ancillary service;

2194 (ii) data communications;

2195 (iii) voice communications; or

2196 (iv) telecommunications service.

2197 (b) The following apply to Subsection (137)(a):

2198 (i) an amplifier;

2199 (ii) a cable;

2200 (iii) a closure;

2201 (iv) a conduit;

2202 (v) a controller;

- 2203 (vi) a duplexer;
- 2204 (vii) a filter;
- 2205 (viii) an input device;
- 2206 (ix) an input/output device;
- 2207 (x) an insulator;
- 2208 (xi) microwave machinery or equipment;
- 2209 (xii) an oscillator;
- 2210 (xiii) an output device;
- 2211 (xiv) a pedestal;
- 2212 (xv) a power converter;
- 2213 (xvi) a power supply;
- 2214 (xvii) a radio channel;
- 2215 (xviii) a radio receiver;
- 2216 (xix) a radio transmitter;
- 2217 (xx) a repeater;
- 2218 (xxi) software;
- 2219 (xxii) a terminal;
- 2220 (xxiii) a timing unit;
- 2221 (xxiv) a transformer;
- 2222 (xxv) a wire; or
- 2223 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 2224 Subsections (137)(b)(i) through (xxv) as determined by the commission by rule made in
- 2225 accordance with Subsection (137)(c).
- 2226 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 2227 commission may by rule define what constitutes equipment, machinery, or software that
- 2228 functions similarly to an item listed in Subsections (137)(b)(i) through (xxv).
- 2229 (138) (a) "Textbook for a higher education course" means a textbook or other printed
- 2230 material that is required for a course:
- 2231 (i) offered by an institution of higher education; and
- 2232 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 2233 (b) "Textbook for a higher education course" includes a textbook in electronic format.

2234 (139) "Tobacco" means:

2235 (a) a cigarette;

2236 (b) a cigar;

2237 (c) chewing tobacco;

2238 (d) pipe tobacco; or

2239 (e) any other item that contains tobacco.

2240 (140) "Unassisted amusement device" means an amusement device, skill device, or
2241 ride device that is started and stopped by the purchaser or renter of the right to use or operate
2242 the amusement device, skill device, or ride device.

2243 (141) (a) "Use" means the exercise of any right or power over tangible personal
2244 property, a product transferred electronically, or a service under Subsection 59-12-103(1),
2245 incident to the ownership or the leasing of that tangible personal property, product transferred
2246 electronically, or service.

2247 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal
2248 property, a product transferred electronically, or a service in the regular course of business and
2249 held for resale.

2250 (142) "Value-added nonvoice data service" means a service:

2251 (a) that otherwise meets the definition of a telecommunications service except that a
2252 computer processing application is used to act primarily for a purpose other than conveyance,
2253 routing, or transmission; and

2254 (b) with respect to which a computer processing application is used to act on data or
2255 information:

2256 (i) code;

2257 (ii) content;

2258 (iii) form; or

2259 (iv) protocol.

2260 (143) (a) Subject to Subsection (143)(b), "vehicle" means the following that are
2261 required to be titled, registered, or titled and registered:

2262 (i) an aircraft as defined in Section 72-10-102;

2263 (ii) a vehicle as defined in Section 41-1a-102;

2264 (iii) an off-highway vehicle as defined in Section 41-22-2; or

- 2265 (iv) a vessel as defined in Section 41-1a-102.
- 2266 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 2267 (i) a vehicle described in Subsection (143)(a); or
- 2268 (ii) (A) a locomotive;
- 2269 (B) a freight car;
- 2270 (C) railroad work equipment; or
- 2271 (D) other railroad rolling stock.
- 2272 (144) "Vehicle dealer" means a person engaged in the business of buying, selling, or
- 2273 exchanging a vehicle as defined in Subsection (143).
- 2274 (145) (a) "Vertical service" means an ancillary service that:
- 2275 (i) is offered in connection with one or more telecommunications services; and
- 2276 (ii) offers an advanced calling feature that allows a customer to:
- 2277 (A) identify a caller; and
- 2278 (B) manage multiple calls and call connections.
- 2279 (b) "Vertical service" includes an ancillary service that allows a customer to manage a
- 2280 conference bridging service.
- 2281 (146) (a) "Voice mail service" means an ancillary service that enables a customer to
- 2282 receive, send, or store a recorded message.
- 2283 (b) "Voice mail service" does not include a vertical service that a customer is required
- 2284 to have in order to utilize a voice mail service.
- 2285 (147) (a) [~~Except as provided in Subsection (147)(b), "waste"~~] "Waste energy facility"
- 2286 means a facility that generates electricity:
- 2287 (i) using as the primary source of energy waste materials that would be placed in a
- 2288 landfill or refuse pit if it were not used to generate electricity, including:
- 2289 (A) tires;
- 2290 (B) waste coal;
- 2291 (C) oil shale; or
- 2292 (D) municipal solid waste; and
- 2293 (ii) in amounts greater than actually required for the operation of the facility.
- 2294 (b) "Waste energy facility" does not include a facility that incinerates:
- 2295 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

2296 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

2297 (148) "Watercraft" means a vessel as defined in Section 73-18-2.

2298 (149) "Wind energy" means wind used as the sole source of energy to produce
2299 electricity.

2300 (150) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
2301 location by the United States Postal Service.

2302 Section 5. Section **59-12-103** is amended to read:

2303 **59-12-103. Sales and use tax base -- Rates -- Effective dates -- Use of sales and use**
2304 **tax revenue.**

2305 (1) A tax is imposed on the purchaser as provided in this part on the purchase price or
2306 sales price for amounts paid or charged for the following transactions:

2307 (a) retail sales of tangible personal property made within the state;

2308 (b) amounts paid for:

2309 (i) telecommunications service, other than mobile telecommunications service, that
2310 originates and terminates within the boundaries of this state;

2311 (ii) mobile telecommunications service that originates and terminates within the
2312 boundaries of one state only to the extent permitted by the Mobile Telecommunications
2313 Sourcing Act, 4 U.S.C. Sec. 116 et seq.; or

2314 (iii) an ancillary service associated with a:

2315 (A) telecommunications service described in Subsection (1)(b)(i); or

2316 (B) mobile telecommunications service described in Subsection (1)(b)(ii);

2317 (c) sales of the following for commercial use:

2318 (i) gas;

2319 (ii) electricity;

2320 (iii) heat;

2321 (iv) coal;

2322 (v) fuel oil; ~~or~~

2323 (vi) hydrogen; or

2324 ~~(vi)~~ (vii) other fuels;

2325 (d) sales of the following for residential use:

2326 (i) gas;

- 2327 (ii) electricity;
- 2328 (iii) heat;
- 2329 (iv) coal;
- 2330 (v) fuel oil; ~~[or]~~
- 2331 (vi) hydrogen; or
- 2332 ~~[(vi)]~~ (vii) other fuels;
- 2333 (e) sales of prepared food;
- 2334 (f) except as provided in Section 59-12-104, amounts paid or charged as admission or
- 2335 user fees for theaters, movies, operas, museums, planetariums, shows of any type or nature,
- 2336 exhibitions, concerts, carnivals, amusement parks, amusement rides, circuses, menageries,
- 2337 fairs, races, contests, sporting events, dances, boxing matches, wrestling matches, closed circuit
- 2338 television broadcasts, billiard parlors, pool parlors, bowling lanes, golf, miniature golf, golf
- 2339 driving ranges, batting cages, skating rinks, ski lifts, ski runs, ski trails, snowmobile trails,
- 2340 tennis courts, swimming pools, water slides, river runs, jeep tours, boat tours, scenic cruises,
- 2341 horseback rides, sports activities, or any other amusement, entertainment, recreation,
- 2342 exhibition, cultural, or athletic activity;
- 2343 (g) amounts paid or charged for services for repairs or renovations of tangible personal
- 2344 property, unless Section 59-12-104 provides for an exemption from sales and use tax for:
- 2345 (i) the tangible personal property; and
- 2346 (ii) parts used in the repairs or renovations of the tangible personal property described
- 2347 in Subsection (1)(g)(i), regardless of whether:
- 2348 (A) any parts are actually used in the repairs or renovations of that tangible personal
- 2349 property; or
- 2350 (B) the particular parts used in the repairs or renovations of that tangible personal
- 2351 property are exempt from a tax under this chapter;
- 2352 (h) except as provided in Subsection 59-12-104(7), amounts paid or charged for
- 2353 assisted cleaning or washing of tangible personal property;
- 2354 (i) amounts paid or charged for tourist home, hotel, motel, or trailer court
- 2355 accommodations and services that are regularly rented for less than 30 consecutive days;
- 2356 (j) amounts paid or charged for laundry or dry cleaning services;
- 2357 (k) amounts paid or charged for leases or rentals of tangible personal property if within

2358 this state the tangible personal property is:

2359 (i) stored;

2360 (ii) used; or

2361 (iii) otherwise consumed;

2362 (l) amounts paid or charged for tangible personal property if within this state the

2363 tangible personal property is:

2364 (i) stored;

2365 (ii) used; or

2366 (iii) consumed; and

2367 (m) amounts paid or charged for a sale:

2368 (i) (A) of a product transferred electronically; or

2369 (B) of a repair or renovation of a product transferred electronically; and

2370 (ii) regardless of whether the sale provides:

2371 (A) a right of permanent use of the product; or

2372 (B) a right to use the product that is less than a permanent use, including a right:

2373 (I) for a definite or specified length of time; and

2374 (II) that terminates upon the occurrence of a condition.

2375 (2) (a) Except as provided in Subsections (2)(b) through (e), a state tax and a local tax

2376 are imposed on a transaction described in Subsection (1) equal to the sum of:

2377 (i) a state tax imposed on the transaction at a tax rate equal to the sum of:

2378 (A) (I) through March 31, 2019, 4.70%; and

2379 (II) beginning on April 1, 2019, 4.70% plus the rate specified in Subsection (13)(a);

2380 and

2381 (B) (I) the tax rate the state imposes in accordance with Part 18, Additional State Sales

2382 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

2383 through 59-12-215 is in a county in which the state imposes the tax under Part 18, Additional

2384 State Sales and Use Tax Act; and

2385 (II) the tax rate the state imposes in accordance with Part 20, Supplemental State Sales

2386 and Use Tax Act, if the location of the transaction as determined under Sections 59-12-211

2387 through 59-12-215 is in a city, town, or the unincorporated area of a county in which the state

2388 imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

2389 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
2390 transaction under this chapter other than this part.

2391 (b) Except as provided in Subsection (2)(d) or (e) and subject to Subsection (2)(j), a
2392 state tax and a local tax are imposed on a transaction described in Subsection (1)(d) equal to
2393 the sum of:

2394 (i) a state tax imposed on the transaction at a tax rate of 2%; and

2395 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
2396 transaction under this chapter other than this part.

2397 (c) Except as provided in Subsection (2)(d) or (e), a state tax and a local tax are
2398 imposed on amounts paid or charged for food and food ingredients equal to the sum of:

2399 (i) a state tax imposed on the amounts paid or charged for food and food ingredients at
2400 a tax rate of 1.75%; and

2401 (ii) a local tax equal to the sum of the tax rates a county, city, or town imposes on the
2402 amounts paid or charged for food and food ingredients under this chapter other than this part.

2403 (d) (i) For a bundled transaction that is attributable to food and food ingredients and
2404 tangible personal property other than food and food ingredients, a state tax and a local tax is
2405 imposed on the entire bundled transaction equal to the sum of:

2406 (A) a state tax imposed on the entire bundled transaction equal to the sum of:

2407 (I) the tax rate described in Subsection (2)(a)(i)(A); and

2408 (II) (Aa) the tax rate the state imposes in accordance with Part 18, Additional State
2409 Sales and Use Tax Act, if the location of the transaction as determined under Sections
2410 59-12-211 through 59-12-215 is in a county in which the state imposes the tax under Part 18,
2411 Additional State Sales and Use Tax Act; and

2412 (Bb) the tax rate the state imposes in accordance with Part 20, Supplemental State
2413 Sales and Use Tax Act, if the location of the transaction as determined under Sections
2414 59-12-211 through 59-12-215 is in a city, town, or the unincorporated area of a county in which
2415 the state imposes the tax under Part 20, Supplemental State Sales and Use Tax Act; and

2416 (B) a local tax imposed on the entire bundled transaction at the sum of the tax rates
2417 described in Subsection (2)(a)(ii).

2418 (ii) If an optional computer software maintenance contract is a bundled transaction that
2419 consists of taxable and nontaxable products that are not separately itemized on an invoice or

similar billing document, the purchase of the optional computer software maintenance contract is 40% taxable under this chapter and 60% nontaxable under this chapter.

(iii) Subject to Subsection (2)(d)(iv), for a bundled transaction other than a bundled transaction described in Subsection (2)(d)(i) or (ii):

(A) if the sales price of the bundled transaction is attributable to tangible personal property, a product, or a service that is subject to taxation under this chapter and tangible personal property, a product, or service that is not subject to taxation under this chapter, the entire bundled transaction is subject to taxation under this chapter unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is not subject to taxation under this chapter from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise; or

(B) if the sales price of a bundled transaction is attributable to two or more items of tangible personal property, products, or services that are subject to taxation under this chapter at different rates, the entire bundled transaction is subject to taxation under this chapter at the higher tax rate unless:

(I) the seller is able to identify by reasonable and verifiable standards the tangible personal property, product, or service that is subject to taxation under this chapter at the lower tax rate from the books and records the seller keeps in the seller's regular course of business; or

(II) state or federal law provides otherwise.

(iv) For purposes of Subsection (2)(d)(iii), books and records that a seller keeps in the seller's regular course of business includes books and records the seller keeps in the regular course of business for nontax purposes.

(e) (i) Except as otherwise provided in this chapter and subject to Subsections (2)(e)(ii) and (iii), if a transaction consists of the sale, lease, or rental of tangible personal property, a product, or a service that is subject to taxation under this chapter, and the sale, lease, or rental of tangible personal property, other property, a product, or a service that is not subject to taxation under this chapter, the entire transaction is subject to taxation under this chapter unless the seller, at the time of the transaction:

(A) separately states the portion of the transaction that is not subject to taxation under this chapter on an invoice, bill of sale, or similar document provided to the purchaser; or

2451 (B) is able to identify by reasonable and verifiable standards, from the books and
2452 records the seller keeps in the seller's regular course of business, the portion of the transaction
2453 that is not subject to taxation under this chapter.

2454 (ii) A purchaser and a seller may correct the taxability of a transaction if:

2455 (A) after the transaction occurs, the purchaser and the seller discover that the portion of
2456 the transaction that is not subject to taxation under this chapter was not separately stated on an
2457 invoice, bill of sale, or similar document provided to the purchaser because of an error or
2458 ignorance of the law; and

2459 (B) the seller is able to identify by reasonable and verifiable standards, from the books
2460 and records the seller keeps in the seller's regular course of business, the portion of the
2461 transaction that is not subject to taxation under this chapter.

2462 (iii) For purposes of Subsections (2)(e)(i) and (ii), books and records that a seller keeps
2463 in the seller's regular course of business includes books and records the seller keeps in the
2464 regular course of business for nontax purposes.

2465 (f) (i) If the sales price of a transaction is attributable to two or more items of tangible
2466 personal property, products, or services that are subject to taxation under this chapter at
2467 different rates, the entire purchase is subject to taxation under this chapter at the higher tax rate
2468 unless the seller, at the time of the transaction:

2469 (A) separately states the items subject to taxation under this chapter at each of the
2470 different rates on an invoice, bill of sale, or similar document provided to the purchaser; or

2471 (B) is able to identify by reasonable and verifiable standards the tangible personal
2472 property, product, or service that is subject to taxation under this chapter at the lower tax rate
2473 from the books and records the seller keeps in the seller's regular course of business.

2474 (ii) For purposes of Subsection (2)(f)(i), books and records that a seller keeps in the
2475 seller's regular course of business includes books and records the seller keeps in the regular
2476 course of business for nontax purposes.

2477 (g) Subject to Subsections (2)(h) and (i), a tax rate repeal or tax rate change for a tax
2478 rate imposed under the following shall take effect on the first day of a calendar quarter:

2479 (i) Subsection (2)(a)(i)(A);

2480 (ii) Subsection (2)(b)(i);

2481 (iii) Subsection (2)(c)(i); or

- 2482 (iv) Subsection (2)(d)(i)(A)(I).
- 2483 (h) (i) A tax rate increase takes effect on the first day of the first billing period that
- 2484 begins on or after the effective date of the tax rate increase if the billing period for the
- 2485 transaction begins before the effective date of a tax rate increase imposed under:
- 2486 (A) Subsection (2)(a)(i)(A);
- 2487 (B) Subsection (2)(b)(i);
- 2488 (C) Subsection (2)(c)(i); or
- 2489 (D) Subsection (2)(d)(i)(A)(I).
- 2490 (ii) The repeal of a tax or a tax rate decrease applies to a billing period if the billing
- 2491 statement for the billing period is rendered on or after the effective date of the repeal of the tax
- 2492 or the tax rate decrease imposed under:
- 2493 (A) Subsection (2)(a)(i)(A);
- 2494 (B) Subsection (2)(b)(i);
- 2495 (C) Subsection (2)(c)(i); or
- 2496 (D) Subsection (2)(d)(i)(A)(I).
- 2497 (i) (i) For a tax rate described in Subsection (2)(i)(ii), if a tax due on a catalogue sale is
- 2498 computed on the basis of sales and use tax rates published in the catalogue, a tax rate repeal or
- 2499 change in a tax rate takes effect:
- 2500 (A) on the first day of a calendar quarter; and
- 2501 (B) beginning 60 days after the effective date of the tax rate repeal or tax rate change.
- 2502 (ii) Subsection (2)(i)(i) applies to the tax rates described in the following:
- 2503 (A) Subsection (2)(a)(i)(A);
- 2504 (B) Subsection (2)(b)(i);
- 2505 (C) Subsection (2)(c)(i); or
- 2506 (D) Subsection (2)(d)(i)(A)(I).
- 2507 (iii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 2508 the commission may by rule define the term "catalogue sale."
- 2509 (j) (i) For a location described in Subsection (2)(j)(ii), the commission shall determine
- 2510 the taxable status of a sale of gas, electricity, heat, coal, fuel oil, or other fuel based on the
- 2511 predominant use of the gas, electricity, heat, coal, fuel oil, or other fuel at the location.
- 2512 (ii) Subsection (2)(j)(i) applies to a location where gas, electricity, heat, coal, fuel oil,

2513 or other fuel is furnished through a single meter for two or more of the following uses:

2514 (A) a commercial use;

2515 (B) an industrial use; or

2516 (C) a residential use.

2517 (3) (a) The following state taxes shall be deposited into the General Fund:

2518 (i) the tax imposed by Subsection (2)(a)(i)(A);

2519 (ii) the tax imposed by Subsection (2)(b)(i);

2520 (iii) the tax imposed by Subsection (2)(c)(i); or

2521 (iv) the tax imposed by Subsection (2)(d)(i)(A)(I).

2522 (b) The following local taxes shall be distributed to a county, city, or town as provided

2523 in this chapter:

2524 (i) the tax imposed by Subsection (2)(a)(ii);

2525 (ii) the tax imposed by Subsection (2)(b)(ii);

2526 (iii) the tax imposed by Subsection (2)(c)(ii); and

2527 (iv) the tax imposed by Subsection (2)(d)(i)(B).

2528 (4) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,

2529 2003, the lesser of the following amounts shall be expended as provided in Subsections (4)(b)

2530 through (g):

2531 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated:

2532 (A) by a 1/16% tax rate on the transactions described in Subsection (1); and

2533 (B) for the fiscal year; or

2534 (ii) \$17,500,000.

2535 (b) (i) For a fiscal year beginning on or after July 1, 2003, 14% of the amount

2536 described in Subsection (4)(a) shall be transferred each year as dedicated credits to the

2537 Department of Natural Resources to:

2538 (A) implement the measures described in Subsections 79-2-303(3)(a) through (d) to

2539 protect sensitive plant and animal species; or

2540 (B) award grants, up to the amount authorized by the Legislature in an appropriations

2541 act, to political subdivisions of the state to implement the measures described in Subsections

2542 79-2-303(3)(a) through (d) to protect sensitive plant and animal species.

2543 (ii) Money transferred to the Department of Natural Resources under Subsection

2544 (4)(b)(i) may not be used to assist the United States Fish and Wildlife Service or any other
2545 person to list or attempt to have listed a species as threatened or endangered under the
2546 Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

2547 (iii) At the end of each fiscal year:

2548 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
2549 Conservation and Development Fund created in Section 73-10-24;

2550 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
2551 Program Subaccount created in Section 73-10c-5; and

2552 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
2553 Program Subaccount created in Section 73-10c-5.

2554 (c) For a fiscal year beginning on or after July 1, 2003, 3% of the amount described in
2555 Subsection (4)(a) shall be deposited each year in the Agriculture Resource Development Fund
2556 created in Section 4-18-106.

2557 (d) (i) For a fiscal year beginning on or after July 1, 2003, 1% of the amount described
2558 in Subsection (4)(a) shall be transferred each year as dedicated credits to the Division of Water
2559 Rights to cover the costs incurred in hiring legal and technical staff for the adjudication of
2560 water rights.

2561 (ii) At the end of each fiscal year:

2562 (A) 50% of any unexpended dedicated credits shall lapse to the Water Resources
2563 Conservation and Development Fund created in Section 73-10-24;

2564 (B) 25% of any unexpended dedicated credits shall lapse to the Utah Wastewater Loan
2565 Program Subaccount created in Section 73-10c-5; and

2566 (C) 25% of any unexpended dedicated credits shall lapse to the Drinking Water Loan
2567 Program Subaccount created in Section 73-10c-5.

2568 (e) (i) For a fiscal year beginning on or after July 1, 2003, 41% of the amount described
2569 in Subsection (4)(a) shall be deposited into the Water Resources Conservation and
2570 Development Fund created in Section 73-10-24 for use by the Division of Water Resources.

2571 (ii) In addition to the uses allowed of the Water Resources Conservation and
2572 Development Fund under Section 73-10-24, the Water Resources Conservation and
2573 Development Fund may also be used to:

2574 (A) conduct hydrologic and geotechnical investigations by the Division of Water

2575 Resources in a cooperative effort with other state, federal, or local entities, for the purpose of
2576 quantifying surface and ground water resources and describing the hydrologic systems of an
2577 area in sufficient detail so as to enable local and state resource managers to plan for and
2578 accommodate growth in water use without jeopardizing the resource;

2579 (B) fund state required dam safety improvements; and

2580 (C) protect the state's interest in interstate water compact allocations, including the
2581 hiring of technical and legal staff.

2582 (f) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
2583 in Subsection (4)(a) shall be deposited into the Utah Wastewater Loan Program Subaccount
2584 created in Section 73-10c-5 for use by the Water Quality Board to fund wastewater projects.

2585 (g) For a fiscal year beginning on or after July 1, 2003, 20.5% of the amount described
2586 in Subsection (4)(a) shall be deposited into the Drinking Water Loan Program Subaccount
2587 created in Section 73-10c-5 for use by the Division of Drinking Water to:

2588 (i) provide for the installation and repair of collection, treatment, storage, and
2589 distribution facilities for any public water system, as defined in Section 19-4-102;

2590 (ii) develop underground sources of water, including springs and wells; and

2591 (iii) develop surface water sources.

2592 (5) (a) Notwithstanding Subsection (3)(a), for a fiscal year beginning on or after July 1,
2593 2006, the difference between the following amounts shall be expended as provided in this
2594 Subsection (5), if that difference is greater than \$1:

2595 (i) for taxes listed under Subsection (3)(a), the amount of tax revenue generated for the
2596 fiscal year by a 1/16% tax rate on the transactions described in Subsection (1); and

2597 (ii) \$17,500,000.

2598 (b) (i) The first \$500,000 of the difference described in Subsection (5)(a) shall be:

2599 (A) transferred each fiscal year to the Department of Natural Resources as dedicated
2600 credits; and

2601 (B) expended by the Department of Natural Resources for watershed rehabilitation or
2602 restoration.

2603 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
2604 in Subsection (5)(b)(i) shall lapse to the Water Resources Conservation and Development Fund
2605 created in Section 73-10-24.

2606 (c) (i) After making the transfer required by Subsection (5)(b)(i), \$150,000 of the
2607 remaining difference described in Subsection (5)(a) shall be:

2608 (A) transferred each fiscal year to the Division of Water Resources as dedicated
2609 credits; and

2610 (B) expended by the Division of Water Resources for cloud-seeding projects
2611 authorized by Title 73, Chapter 15, Modification of Weather.

2612 (ii) At the end of each fiscal year, 100% of any unexpended dedicated credits described
2613 in Subsection (5)(c)(i) shall lapse to the Water Resources Conservation and Development Fund
2614 created in Section 73-10-24.

2615 (d) After making the transfers required by Subsections (5)(b) and (c), 85% of the
2616 remaining difference described in Subsection (5)(a) shall be deposited into the Water
2617 Resources Conservation and Development Fund created in Section 73-10-24 for use by the
2618 Division of Water Resources for:

2619 (i) preconstruction costs:

2620 (A) as defined in Subsection 73-26-103(6) for projects authorized by Title 73, Chapter
2621 26, Bear River Development Act; and

2622 (B) as defined in Subsection 73-28-103(8) for the Lake Powell Pipeline project
2623 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act;

2624 (ii) the cost of employing a civil engineer to oversee any project authorized by Title 73,
2625 Chapter 26, Bear River Development Act;

2626 (iii) the cost of employing a civil engineer to oversee the Lake Powell Pipeline project
2627 authorized by Title 73, Chapter 28, Lake Powell Pipeline Development Act; and

2628 (iv) other uses authorized under Sections 73-10-24, 73-10-25.1, and 73-10-30, and
2629 Subsection (4)(e)(ii) after funding the uses specified in Subsections (5)(d)(i) through (iii).

2630 (e) After making the transfers required by Subsections (5)(b) and (c) and subject to
2631 Subsection (5)(f), 15% of the remaining difference described in Subsection (5)(a) shall be
2632 transferred each year as dedicated credits to the Division of Water Rights to cover the costs
2633 incurred for employing additional technical staff for the administration of water rights.

2634 (f) At the end of each fiscal year, any unexpended dedicated credits described in
2635 Subsection (5)(e) over \$150,000 lapse to the Water Resources Conservation and Development
2636 Fund created in Section 73-10-24.

2637 (6) Notwithstanding Subsection (3)(a) and for taxes listed under Subsection (3)(a), the
2638 amount of revenue generated by a 1/16% tax rate on the transactions described in Subsection
2639 (1) for the fiscal year shall be deposited as follows:

2640 (a) for fiscal year 2016-17 only, 100% of the revenue described in this Subsection (6)
2641 shall be deposited into the Transportation Investment Fund of 2005 created by Section
2642 72-2-124;

2643 (b) for fiscal year 2017-18 only:

2644 (i) 80% of the revenue described in this Subsection (6) shall be deposited into the
2645 Transportation Investment Fund of 2005 created by Section 72-2-124; and

2646 (ii) 20% of the revenue described in this Subsection (6) shall be deposited into the
2647 Water Infrastructure Restricted Account created by Section 73-10g-103;

2648 (c) for fiscal year 2018-19 only:

2649 (i) 60% of the revenue described in this Subsection (6) shall be deposited into the
2650 Transportation Investment Fund of 2005 created by Section 72-2-124; and

2651 (ii) 40% of the revenue described in this Subsection (6) shall be deposited into the
2652 Water Infrastructure Restricted Account created by Section 73-10g-103;

2653 (d) for fiscal year 2019-20 only:

2654 (i) 40% of the revenue described in this Subsection (6) shall be deposited into the
2655 Transportation Investment Fund of 2005 created by Section 72-2-124; and

2656 (ii) 60% of the revenue described in this Subsection (6) shall be deposited into the
2657 Water Infrastructure Restricted Account created by Section 73-10g-103;

2658 (e) for fiscal year 2020-21 only:

2659 (i) 20% of the revenue described in this Subsection (6) shall be deposited into the
2660 Transportation Investment Fund of 2005 created by Section 72-2-124; and

2661 (ii) 80% of the revenue described in this Subsection (6) shall be deposited into the
2662 Water Infrastructure Restricted Account created by Section 73-10g-103; and

2663 (f) for a fiscal year beginning on or after July 1, 2021, 100% of the revenue described
2664 in this Subsection (6) shall be deposited into the Water Infrastructure Restricted Account
2665 created by Section 73-10g-103.

2666 (7) (a) Notwithstanding Subsection (3)(a), in addition to the amounts deposited in
2667 Subsection (6), and subject to Subsection (7)(b), for a fiscal year beginning on or after July 1,

2668 2012, the Division of Finance shall deposit into the Transportation Investment Fund of 2005
2669 created by Section 72-2-124:

2670 (i) a portion of the taxes listed under Subsection (3)(a) in an amount equal to 8.3% of
2671 the ~~[revenues]~~ revenue collected from the following taxes, which represents a portion of the
2672 approximately 17% of sales and use tax ~~[revenues]~~ revenue generated annually by the sales and
2673 use tax on vehicles and vehicle-related products:

2674 (A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;

2675 (B) the tax imposed by Subsection (2)(b)(i);

2676 (C) the tax imposed by Subsection (2)(c)(i); and

2677 (D) the tax imposed by Subsection (2)(d)(i)(A)(I); plus

2678 (ii) an amount equal to 30% of the growth in the amount of ~~[revenues]~~ revenue
2679 collected in the current fiscal year from the sales and use taxes described in Subsections
2680 (7)(a)(i)(A) through (D) that exceeds the amount collected from the sales and use taxes
2681 described in Subsections (7)(a)(i)(A) through (D) in the 2010-11 fiscal year.

2682 (b) (i) Subject to Subsections (7)(b)(ii) and (iii), in any fiscal year that the portion of
2683 the sales and use taxes deposited under Subsection (7)(a) represents an amount that is a total
2684 lower percentage of the sales and use taxes described in Subsections (7)(a)(i)(A) through (D)
2685 generated in the current fiscal year than the total percentage of sales and use taxes deposited in
2686 the previous fiscal year, the Division of Finance shall deposit an amount under Subsection
2687 (7)(a) equal to the product of:

2688 (A) the total percentage of sales and use taxes deposited under Subsection (7)(a) in the
2689 previous fiscal year; and

2690 (B) the total sales and use tax revenue generated by the taxes described in Subsections
2691 (7)(a)(i)(A) through (D) in the current fiscal year.

2692 (ii) In any fiscal year in which the portion of the sales and use taxes deposited under
2693 Subsection (7)(a) would exceed 17% of the ~~[revenues]~~ revenue collected from the sales and use
2694 taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year, the Division
2695 of Finance shall deposit 17% of the ~~[revenues]~~ revenue collected from the sales and use taxes
2696 described in Subsections (7)(a)(i)(A) through (D) for the current fiscal year under Subsection
2697 (7)(a).

2698 (iii) In all subsequent fiscal years after a year in which 17% of the ~~[revenues]~~ revenue

collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) was deposited under Subsection (7)(a), the Division of Finance shall annually deposit 17% of the [revenues] revenue collected from the sales and use taxes described in Subsections (7)(a)(i)(A) through (D) in the current fiscal year under Subsection (7)(a).

(8) (a) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2016-17 fiscal year only, the Division of Finance shall deposit \$64,000,000 of the [revenues] revenue generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(b) Notwithstanding Subsection (3)(a), and in addition to the amounts deposited under Subsections (6) and (7), for the 2017-18 fiscal year only, the Division of Finance shall deposit \$63,000,000 of the [revenues] revenue generated by the taxes listed under Subsection (3)(a) into the Transportation Investment Fund of 2005 created by Section 72-2-124.

(c) (i) Notwithstanding Subsection (3)(a), in addition to the amounts deposited under Subsections (6) and (7), and subject to Subsection (8)(c)(ii), for a fiscal year beginning on or after July 1, 2018, the commission shall annually deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 a portion of the taxes listed under Subsection (3)(a) in an amount equal to 3.68% of the [revenues] revenue collected from the following taxes:

(A) the tax imposed by Subsection (2)(a)(i)(A) at a 4.7% rate;

(B) the tax imposed by Subsection (2)(b)(i);

(C) the tax imposed by Subsection (2)(c)(i); and

(D) the tax imposed by Subsection (2)(d)(i)(A)(I).

(ii) For a fiscal year beginning on or after July 1, 2019, the commission shall annually reduce the deposit into the Transportation Investment Fund of 2005 under Subsection (8)(c)(i) by an amount that is equal to 35% of the amount of revenue generated in the current fiscal year by the portion of the tax imposed on motor and special fuel that is sold, used, or received for sale or use in this state that exceeds 29.4 cents per gallon.

(iii) The commission shall annually deposit the amount described in Subsection (8)(c)(ii) into the Transit and Transportation Investment Fund created in Section 72-2-124.

(9) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year 2009-10, \$533,750 shall be deposited into the Qualified Emergency Food Agencies Fund created by Section 35A-8-1009 and expended as provided in Section 35A-8-1009.

(10) (a) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), in addition to any amounts deposited under Subsections (6), (7), and (8), and for the 2016-17 fiscal year only, the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of tax revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(b) Notwithstanding Subsection (3)(a), except as provided in Subsection (10)(c), and in addition to any amounts deposited under Subsections (6), (7), and (8), the Division of Finance shall deposit into the Transportation Investment Fund of 2005 created by Section 72-2-124 the amount of revenue described as follows:

(i) for fiscal year 2017-18 only, 83.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(ii) for fiscal year 2018-19 only, 66.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iii) for fiscal year 2019-20 only, 50% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1);

(iv) for fiscal year 2020-21 only, 33.33% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1); and

(v) for fiscal year 2021-22 only, 16.67% of the amount of revenue generated by a .05% tax rate on the transactions described in Subsection (1).

(c) For purposes of Subsections (10)(a) and (b), the Division of Finance may not deposit into the Transportation Investment Fund of 2005 any tax revenue generated by amounts paid or charged for food and food ingredients, except for tax revenue generated by a bundled transaction attributable to food and food ingredients and tangible personal property other than food and food ingredients described in Subsection (2)(d).

(11) Notwithstanding Subsection (3)(a), beginning the second fiscal year after the fiscal year during which the Division of Finance receives notice under Section 63N-2-510 that construction on a qualified hotel, as defined in Section 63N-2-502, has begun, the Division of Finance shall, for two consecutive fiscal years, annually deposit \$1,900,000 of the revenue generated by the taxes listed under Subsection (3)(a) into the Hotel Impact Mitigation Fund, created in Section 63N-2-512.

(12) (a) Notwithstanding Subsection (3)(a), for the 2016-17 fiscal year only, the

2761 Division of Finance shall deposit \$26,000,000 of the ~~[revenues]~~ revenue generated by the taxes
 2762 listed under Subsection (3)(a) into the Throughput Infrastructure Fund created by Section
 2763 35A-8-308.

2764 (b) Notwithstanding Subsection (3)(a), for the 2017-18 fiscal year only, the Division of
 2765 Finance shall deposit \$27,000,000 of the ~~[revenues]~~ revenue generated by the taxes listed under
 2766 Subsection (3)(a) into the Throughput Infrastructure Fund created by Section 35A-8-308.

2767 (13) (a) The rate specified in this subsection is 0.15%.

2768 (b) Notwithstanding Subsection (3)(a), the Division of Finance shall~~[(i) on or before~~
 2769 ~~September 30, 2019, transfer the amount of revenue collected from the rate described in~~
 2770 ~~Subsection (13)(a) beginning on April 1, 2019, and ending on June 30, 2019, on the~~
 2771 ~~transactions that are subject to the sales and use tax under Subsection (2)(a)(i)(A) into the~~
 2772 ~~Medicaid Expansion Fund created in Section 26-36b-208; and (ii)]~~, for a fiscal year beginning
 2773 on or after July 1, 2019, annually transfer the amount of revenue collected from the rate
 2774 described in Subsection (13)(a) on the transactions that are subject to the sales and use tax
 2775 under Subsection (2)(a)(i)(A) into the Medicaid Expansion Fund created in Section
 2776 26-36b-208.

2777 (14) Notwithstanding Subsection (3)(a), for each fiscal year beginning with fiscal year
 2778 2020-21, the Division of Finance shall deposit \$200,000 into the General Fund as a dedicated
 2779 credit solely for use of the Search and Rescue Financial Assistance Program created in, and
 2780 expended in accordance with, Title 53, Chapter 2a, Part 11, Search and Rescue Act.

2781 (15) (a) For each fiscal year beginning with fiscal year 2020-21, the Division of
 2782 Finance shall annually transfer \$1,813,400 of the revenue deposited into the Transportation
 2783 Investment Fund of 2005 under Subsections (6) through (8) to the General Fund.

2784 (b) If the total revenue deposited into the Transportation Investment Fund of 2005
 2785 under Subsections (6) through (8) is less than \$1,813,400 for a fiscal year, the Division of
 2786 Finance shall transfer the total revenue deposited into the Transportation Investment Fund of
 2787 2005 under Subsections (6) through (8) during the fiscal year to the General Fund.

2788 Section 6. Section **59-13-102** is amended to read:

2789 **59-13-102. Definitions.**

2790 As used in this chapter:

2791 (1) "Aviation fuel" means fuel that is sold at airports and used exclusively for the

- 2792 operation of aircraft.
- 2793 (2) "Clean fuel" means:
- 2794 (a) the following special fuels:
- 2795 (i) propane;
- 2796 (ii) compressed natural gas;
- 2797 (iii) liquified natural gas;
- 2798 (iv) electricity; or
- 2799 (v) hydrogen; or
- 2800 (b) any motor or special fuel that meets the clean fuel vehicle standards in the federal
- 2801 Clean Air Act Amendments of 1990, Title II.
- 2802 (3) "Commission" means the State Tax Commission.
- 2803 (4) "Consumer Price Index" means the Consumer Price Index for All Urban
- 2804 Consumers as published by the Bureau of Labor Statistics of the United States Department of
- 2805 Labor.
- 2806 (5) (a) "Diesel fuel" means any liquid that is commonly or commercially known,
- 2807 offered for sale, or used as a fuel in diesel engines.
- 2808 (b) "Diesel fuel" includes any combustible liquid, by whatever name the liquid may be
- 2809 known or sold, when the liquid is used in an internal combustion engine for the generation of
- 2810 power to operate a motor vehicle licensed to operate on the highway, except fuel that is subject
- 2811 to the tax imposed in Part 2, Motor Fuel, and Part 4, Aviation Fuel, of this chapter.
- 2812 (6) "Diesel gallon equivalent" means 6.06 pounds of liquified natural gas.
- 2813 (7) "Distributor" means any person in this state who:
- 2814 (a) imports or causes to be imported motor fuel for use, distribution, or sale, whether at
- 2815 retail or wholesale;
- 2816 (b) produces, refines, manufactures, or compounds motor fuel in this state for use,
- 2817 distribution, or sale in this state;
- 2818 (c) is engaged in the business of purchasing motor fuel for resale in wholesale
- 2819 quantities to retail dealers of motor fuel and who accounts for his own motor fuel tax liability;
- 2820 or
- 2821 (d) for purposes of Part 4, Aviation Fuel, only, makes retail sales of aviation fuel to:
- 2822 (i) federally certificated air carriers; and

2823 (ii) other persons.

2824 (8) "Dyed diesel fuel" means diesel fuel that is dyed in accordance with 26 U.S.C. Sec.
2825 4082 or United States Environmental Protection Agency or Internal Revenue Service
2826 regulations and that is considered destined for nontaxable off-highway use.

2827 (9) "Exchange agreement" means an agreement between licensed suppliers where one
2828 is a position holder in a terminal who agrees to deliver taxable special fuel to the other supplier
2829 or the other supplier's customer at the loading rack of the terminal where the delivering supplier
2830 holds an inventory position.

2831 (10) "Federally certificated air carrier" means a person who holds a certificate issued
2832 by the Federal Aviation Administration authorizing the person to conduct an all-cargo
2833 operation or scheduled operation, as defined in 14 C.F.R. Sec. 110.2.

2834 (11) "Fuels" means any gas, liquid, solid, mixture, or other energy source which is
2835 generally used in an engine or motor for the generation of power, including aviation fuel, clean
2836 fuel, diesel fuel, motor fuel, and special fuel.

2837 (12) "Gasoline gallon equivalent" means[+] 5.660 pounds of compressed natural gas.
2838 [~~(a) 5.660 pounds of compressed natural gas; or~~]
2839 [~~(b) 2.198 pounds of hydrogen.~~]

2840 (13) "Highway" means every way or place, of whatever nature, generally open to the
2841 use of the public for the purpose of vehicular travel notwithstanding that the way or place may
2842 be temporarily closed for the purpose of construction, maintenance, or repair.

2843 (14) "Motor fuel" means fuel that is commonly or commercially known or sold as
2844 gasoline or gasohol and is used for any purpose, but does not include aviation fuel.

2845 (15) "Motor fuels received" means:

2846 (a) motor fuels that have been loaded at the refinery or other place into tank cars,
2847 placed in any tank at the refinery from which any withdrawals are made directly into tank
2848 trucks, tank wagons, or other types of transportation equipment, containers, or facilities other
2849 than tank cars, or placed in any tank at the refinery from which any sales, uses, or deliveries not
2850 involving transportation are made directly; or

2851 (b) motor fuels that have been imported by any person into the state from any other
2852 state or territory by tank car, tank truck, pipeline, or any other conveyance at the time when,
2853 and the place where, the interstate transportation of the motor fuel is completed within the state

2854 by the person who at the time of the delivery is the owner of the motor fuel.

2855 (16) "Oil pricing service" means an organization that:

2856 (a) publishes wholesale petroleum prices within the United States;

2857 (b) publishes at least 25,000 rack prices on a daily basis; and

2858 (c) receives daily gasoline and diesel prices from at least 100,000 retail outlets in the
2859 United States and Canada.

2860 (17) (a) "Qualified motor vehicle" means a special fuel-powered motor vehicle used,
2861 designed, or maintained for transportation of persons or property which:

2862 (i) has a gross vehicle weight or registered gross vehicle weight exceeding 26,000
2863 pounds;

2864 (ii) has three or more axles regardless of weight; or

2865 (iii) is used in a combination of vehicles when the weight of the combination of
2866 vehicles exceeds 26,000 pounds gross vehicle weight.

2867 (b) "Qualified motor vehicle" does not include a recreational vehicle not used in
2868 connection with any business activity.

2869 (18) "Rack," as used in Part 3, Special Fuel, means a deck, platform, or open bay which
2870 consists of a series of metered pipes and hoses for the delivery or removal of diesel fuel from a
2871 refinery or terminal into a motor vehicle, rail car, or vessel.

2872 (19) "Removal," as used in Part 3, Special Fuel, means the physical transfer of diesel
2873 fuel from a production, manufacturing, terminal, or refinery facility and includes use of diesel
2874 fuel. Removal does not include:

2875 (a) loss by evaporation or destruction; or

2876 (b) transfers between refineries, racks, or terminals.

2877 (20) (a) "Special fuel" means any fuel regardless of name or character that:

2878 (i) is usable as fuel to operate or propel a motor vehicle upon the public highways of
2879 the state; and

2880 (ii) is not taxed under the category of aviation or motor fuel.

2881 (b) Special fuel includes:

2882 (i) fuels that are not conveniently measurable on a gallonage basis; and

2883 (ii) diesel fuel.

2884 (21) "Supplier," as used in Part 3, Special Fuel, means a person who:

2885 (a) imports or acquires immediately upon importation into this state diesel fuel from
2886 within or without a state, territory, or possession of the United States or the District of
2887 Columbia;

2888 (b) produces, manufactures, refines, or blends diesel fuel in this state;

2889 (c) otherwise acquires for distribution or sale in this state, diesel fuel with respect to
2890 which there has been no previous taxable sale or use; or

2891 (d) is in a two party exchange where the receiving party is deemed to be the supplier.

2892 (22) "Terminal," as used in Part 3, Special Fuel, means a facility for the storage of
2893 diesel fuel which is supplied by a motor vehicle, pipeline, or vessel and from which diesel fuel
2894 is removed for distribution at a rack.

2895 (23) "Two party exchange" means a transaction in which special fuel is transferred
2896 between licensed suppliers pursuant to an exchange agreement.

2897 (24) "Undyed diesel fuel" means diesel fuel that is not subject to the dyeing
2898 requirements in accordance with 26 U.S.C. Sec. 4082 or United States Environmental
2899 Protection Agency or Internal Revenue Service regulations.

2900 (25) "Use," as used in Part 3, Special Fuel, means the consumption of special fuel for
2901 the operation or propulsion of a motor vehicle upon the public highways of the state and
2902 includes the reception of special fuel into the fuel supply tank of a motor vehicle.

2903 (26) "User," as used in Part 3, Special Fuel, means any person who uses special fuel
2904 within this state in an engine or motor for the generation of power to operate or propel a motor
2905 vehicle upon the public highways of the state.

2906 (27) "Ute tribal member" means an enrolled member of the Ute tribe.

2907 (28) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

2908 (29) "Ute trust land" means the lands:

2909 (a) of the Uintah and Ouray Reservation that are held in trust by the United States for
2910 the benefit of:

2911 (i) the Ute tribe;

2912 (ii) an individual; or

2913 (iii) a group of individuals; or

2914 (b) specified as trust land by agreement between the governor and the Ute tribe meeting
2915 the requirements of Subsections 59-13-201.5(3) and 59-13-301.5(3).

Section 7. Section **59-13-301** is amended to read:

59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer and credited to Transportation Fund -- Reduction of tax in limited circumstances.

(1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section 59-13-304, a tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:

- (i) removal of undyed diesel fuel from any refinery;
- (ii) removal of undyed diesel fuel from any terminal;
- (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or warehousing;
- (iv) sale of undyed diesel fuel to any person who is not registered as a supplier under this part unless the tax has been collected under this section;

- (v) any untaxed special fuel blended with undyed diesel fuel; or
- (vi) use of untaxed special fuel other than propane ~~[or]~~, electricity, or hydrogen.

(b) The tax imposed under this section shall only be imposed once upon any special fuel.

(2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

- (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon the public highways of the state, but this exemption applies only in those cases where the purchasers or the users of special fuel establish to the satisfaction of the commission that the special fuel was used for purposes other than to operate a motor vehicle upon the public highways of the state; or

- (ii) is sold to this state or any of its political subdivisions.

(b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

- (i) sold to the United States government or any of its instrumentalities or to this state or any of its political subdivisions;

- (ii) exported from this state if proof of actual exportation on forms prescribed by the commission is made within 180 days after exportation;

- (iii) used in a vehicle off-highway;
- (iv) used to operate a power take-off unit of a vehicle;
- (v) used for off-highway agricultural uses;
- (vi) used in a separately fueled engine on a vehicle that does not propel the vehicle

2947 upon the highways of the state; or
2948 (vii) used in machinery and equipment not registered and not required to be registered
2949 for highway use.

2950 (3) No tax is imposed or collected on special fuel if it is:
2951 (a) (i) purchased for business use in machinery and equipment not registered and not
2952 required to be registered for highway use; and
2953 (ii) used pursuant to the conditions of a state implementation plan approved under Title
2954 19, Chapter 2, Air Conservation Act; or
2955 (b) propane or electricity.

2956 (4) Upon request of a buyer meeting the requirements under Subsection (3), the
2957 Division of Air Quality shall issue an exemption certificate that may be shown to a seller.

2958 (5) The special fuel tax shall be paid by the supplier.

2959 (6) (a) The special fuel tax shall be paid by every user who is required by Sections
2960 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.
2961 (b) The user shall receive a refundable credit for special fuel taxes paid on purchases
2962 which are delivered into vehicles and for which special fuel tax liability is reported.

2963 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the
2964 commission from taxes and license fees under this part shall be deposited daily with the state
2965 treasurer and credited to the Transportation Fund.

2966 (b) An appropriation from the Transportation Fund shall be made to the commission to
2967 cover expenses incurred in the administration and enforcement of this part and the collection of
2968 the special fuel tax.

2969 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303
2970 may be used by the commission as a dedicated credit to cover the costs of electronic
2971 credentialing as provided in Section 41-1a-303.

2972 (8) The commission may either collect no tax on special fuel exported from the state
2973 or, upon application, refund the tax paid.

2974 (9) (a) The United States government or any of its instrumentalities, this state, or a
2975 political subdivision of this state that has purchased special fuel from a supplier or from a retail
2976 dealer of special fuel and has paid the tax on the special fuel as provided in this section is
2977 entitled to a refund of the tax and may file with the commission for a quarterly refund in a

2978 manner prescribed by the commission.

2979 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2980 commission shall make rules governing the application and refund provided for in Subsection
2981 (9)(a).

2982 (10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses
2983 under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid
2984 as provided in Subsection (9) and this Subsection (10).

2985 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
2986 commission shall make rules governing the application and refund for off-highway and
2987 nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

2988 (c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural
2989 uses shall be made in accordance with the tax return procedures under Section 59-13-202.

2990 (11) (a) ~~[Beginning on April 1, 2001, a]~~ A tax imposed under this section on special
2991 fuel is reduced to the extent provided in Subsection (11)(b) if:

2992 (i) the Navajo Nation imposes a tax on the special fuel;

2993 (ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the
2994 person required to pay the tax is an enrolled member of the Navajo Nation; and

2995 (iii) the commission and the Navajo Nation execute and maintain an agreement as
2996 provided in this Subsection (11) for the administration of the reduction of tax.

2997 (b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this
2998 section:

2999 (A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that
3000 difference is greater than \$0; and

3001 (B) a person may not require the state to provide a refund, a credit, or similar tax relief
3002 if the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.

3003 (ii) The difference described in Subsection (11)(b)(i) is equal to the difference
3004 between:

3005 (A) the amount of tax imposed on the special fuel by this section; less

3006 (B) the tax imposed and collected by the Navajo Nation on the special fuel.

3007 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on
3008 the special fuel does not include any interest or penalties a taxpayer may be required to pay to

3009 the Navajo Nation.

3010 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
3011 commission shall make rules governing the procedures for administering the reduction of tax
3012 provided under this Subsection (11).

3013 (e) The agreement required under Subsection (11)(a):

3014 (i) may not:

3015 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

3016 (B) provide a reduction of taxes greater than or different from the reduction described
3017 in this Subsection (11); or

3018 (C) affect the power of the state to establish rates of taxation;

3019 (ii) shall:

3020 (A) be in writing;

3021 (B) be signed by:

3022 (I) the chair of the commission or the chair's designee; and

3023 (II) a person designated by the Navajo Nation that may bind the Navajo Nation;

3024 (C) be conditioned on obtaining any approval required by federal law;

3025 (D) state the effective date of the agreement; and

3026 (E) state any accommodation the Navajo Nation makes related to the construction and
3027 maintenance of state highways and other infrastructure within the Utah portion of the Navajo
3028 Nation; and

3029 (iii) may:

3030 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the
3031 Navajo Nation information that is:

3032 (I) contained in a document filed with the commission; and

3033 (II) related to the tax imposed under this section;

3034 (B) provide for maintaining records by the commission or the Navajo Nation; or

3035 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers
3036 located or doing business within the Utah portion of the Navajo Nation.

3037 (f) (i) If ~~on or after April 1, 2001,~~ the Navajo Nation changes the tax rate of a tax
3038 imposed on special fuel, any change in the amount of the reduction of taxes under this
3039 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the

3040 calendar quarter after a 60-day period beginning on the date the commission receives notice:

3041 (A) from the Navajo Nation; and

3042 (B) meeting the requirements of Subsection (11)(f)(ii).

3043 (ii) The notice described in Subsection (11)(f)(i) shall state:

3044 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on

3045 special fuel;

3046 (B) the effective date of the rate change of the tax described in Subsection

3047 (11)(f)(ii)(A); and

3048 (C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

3049 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not

3050 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a

3051 30-day period beginning on the day the agreement terminates.

3052 (h) If there is a conflict between this Subsection (11) and the agreement required by

3053 Subsection (11)(a), this Subsection (11) governs.

3054 (12) (a) (i) Subject to Subsections (12)(a)(ii) and (iii), a tax imposed under this section

3055 on compressed natural gas is imposed at a rate of:

3056 (A) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;

3057 (B) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline

3058 gallon equivalent;

3059 (C) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline

3060 gallon equivalent; and

3061 (D) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.

3062 (ii) Beginning on January 1, 2020, the commission shall, on January 1, annually adjust

3063 the rate of a tax imposed under this section on compressed natural gas by taking the rate for the

3064 previous calendar year and adding an amount equal to the greater of:

3065 (A) an amount calculated by multiplying the rate of a tax imposed under this section on

3066 compressed natural gas for the previous calendar year by the actual percent change during the

3067 previous fiscal year in the Consumer Price Index; and

3068 (B) 0.

3069 (iii) The rate of a tax imposed under this section on compressed natural gas determined

3070 by the commission under Subsection (12)(a)(ii) may not exceed 22-1/2 cents per gasoline

3071 gallon equivalent.

3072 (b) (i) Subject to Subsections (12)(b)(ii) and (iii), a tax imposed under this section on
3073 liquified natural gas is imposed at a rate of:

3074 (A) until June 30, 2016, 10-1/2 cents per diesel gallon equivalent;

3075 (B) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per diesel gallon
3076 equivalent;

3077 (C) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per diesel gallon
3078 equivalent; and

3079 (D) beginning on or after July 1, 2018, 16-1/2 cents per diesel gallon equivalent.

3080 (ii) Beginning on January 1, 2020, the commission shall, on January 1, annually adjust
3081 the rate of a tax imposed under this section on liquified natural gas by taking the rate for the
3082 previous calendar year and adding an amount equal to the greater of:

3083 (A) an amount calculated by multiplying the rate of a tax imposed under this section on
3084 liquified natural gas for the previous calendar year by the actual percent change during the
3085 previous fiscal year in the Consumer Price Index; and

3086 (B) 0.

3087 (iii) The rate of a tax imposed under this section on liquified natural gas determined by
3088 the commission under Subsection (12)(b)(ii) may not exceed 22-1/2 cents per diesel gallon
3089 equivalent.

3090 ~~[(c) (i) Subject to Subsections (12)(c)(ii) and (iii), a tax imposed under this section on~~
3091 ~~hydrogen used to operate or propel a motor vehicle upon the public highways of the state is~~
3092 ~~imposed at a rate of:]~~

3093 ~~[(A) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;]~~

3094 ~~[(B) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline~~
3095 ~~gallon equivalent;]~~

3096 ~~[(C) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline~~
3097 ~~gallon equivalent; and]~~

3098 ~~[(D) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.]~~

3099 ~~[(ii) Beginning on January 1, 2020, the commission shall, on January 1, annually adjust~~
3100 ~~the rate of a tax imposed under this section on hydrogen used to operate or propel a motor~~
3101 ~~vehicle upon the public highways of the state by taking the rate for the previous calendar year~~

3102 ~~and adding an amount equal to the greater of:]~~
 3103 ~~[(A) an amount calculated by multiplying the rate of a tax imposed under this section~~
 3104 ~~on hydrogen used to operate or propel a motor vehicle upon the public highways of the state for~~
 3105 ~~the previous calendar year by the actual percent change during the previous fiscal year in the~~
 3106 ~~Consumer Price Index; and]~~

3107 ~~[(B) 0;]~~

3108 ~~[(iii) The rate of a tax imposed under this section on hydrogen used to operate or propel~~
 3109 ~~a motor vehicle upon the public highways of the state determined by the commission under~~
 3110 ~~Subsection (12)(c)(ii) may not exceed 22-1/2 cents per gasoline gallon equivalent.]~~

3111 ~~[(d)]~~ (c) (i) The commission shall annually:

3112 (A) adjust the fuel tax rates imposed under Subsections (12)(a)(ii)[;] and (b)(ii), ~~[and~~
 3113 ~~(c)(ii);]~~ rounded to the nearest one-tenth of a cent;

3114 (B) publish the adjusted fuel tax as a cents per gallon rate; and

3115 (C) post or otherwise make public the adjusted fuel tax rate as determined in
 3116 Subsection (12)[~~(d)~~](c)(i)(A) no later than 60 days prior to the annual effective date under
 3117 Subsection (12)[~~(d)~~](c)(ii).

3118 (ii) The tax rates imposed under this Subsection (12) and adjusted as required under
 3119 Subsection (12)[~~(d)~~](c)(i) shall take effect on January 1 of each year.

3120 Section 8. Section **63M-4-502** is amended to read:

3121 **63M-4-502. Definitions.**

3122 As used in this part:

3123 (1) "Alternative energy" ~~[is as defined in Section 59-12-102;]~~ means:

3124 (a) biomass energy, as defined in Section 59-12-102;

3125 (b) geothermal energy, as defined in Section 59-12-102;

3126 (c) hydroelectric energy, as defined in Section 59-12-102;

3127 (d) solar energy, as defined in Section 59-12-102;

3128 (e) wind energy, as defined in Section 59-12-102; or

3129 (f) energy that is derived from:

3130 (i) coal-to-liquid, as defined in Section 59-12-102;

3131 (ii) nuclear fuel;

3132 (iii) oil-impregnated diatomaceous earth;

3133 (iv) oil sands, as defined in Section 59-12-102;
 3134 (v) oil shale, as defined in Section 59-12-102;
 3135 (vi) petroleum coke; or
 3136 (vii) waste heat from:
 3137 (A) an industrial facility; or
 3138 (B) a power station in which an electric generator is driven through a process in which
 3139 water is heated, turns into steam, and spins a steam turbine.
 3140 (2) (a) "Alternative energy entity" means a person that:
 3141 (i) conducts business within the state; and
 3142 (ii) enters into an agreement with the office that qualifies the person to receive a tax
 3143 credit under this part.
 3144 (b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in
 3145 Section 59-10-1402, of a person described in Subsection (2)(a).
 3146 (3) "Alternative energy project" means a project produced by an alternative energy
 3147 entity if that project involves:
 3148 (a) a new or expanding operation in the state; and
 3149 (b) (i) utility-scale alternative energy generation; or
 3150 (ii) the extraction of alternative fuels.
 3151 (4) "New incremental job within the state" means, with respect to an alternative energy
 3152 entity, an employment position that:
 3153 (a) did not exist within the state before:
 3154 (i) the alternative energy entity entered into an agreement with the office in accordance
 3155 with Section 63M-4-503; and
 3156 (ii) the alternative energy project began;
 3157 (b) is not shifted from one location in the state to another location in the state; and
 3158 (c) is established to the satisfaction of the office, including by amounts paid or
 3159 withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax
 3160 Act.
 3161 (5) "New state revenues" means an increased amount of tax ~~[revenues]~~ revenue
 3162 generated as a result of an alternative energy project by an alternative energy entity or a new
 3163 incremental job within the state under the following:

- 3164 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
3165 (b) Title 59, Chapter 10, Individual Income Tax Act; and
3166 (c) Title 59, Chapter 12, Sales and Use Tax Act.
- 3167 (6) "Office" ~~is as~~ means the same as that term is defined in Section 63M-4-401.
3168 (7) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1029.
3169 (8) "Tax credit applicant" means an alternative energy entity that applies to the office
3170 to receive a tax credit certificate under this part.
- 3171 (9) "Tax credit certificate" means a certificate issued by the office that:
3172 (a) lists the name of the tax credit certificate recipient;
3173 (b) lists the tax credit certificate recipient's taxpayer identification number;
3174 (c) lists the amount of the tax credit certificate recipient's tax credits authorized under
3175 this part for a taxable year; and
3176 (d) includes other information as determined by the office.
- 3177 (10) "Tax credit certificate recipient" means an alternative energy entity that receives a
3178 tax credit certificate for a tax credit in accordance with this part.
- 3179 Section 9. Section **63M-4-602** is amended to read:
3180 **63M-4-602. Definitions.**
3181 As used in this part:
- 3182 (1) "Applicant" means a person that conducts business in the state and that applies for a
3183 tax credit under this part.
- 3184 (2) "Fuel standard compliance project" means a project designed to retrofit a fuel
3185 refinery in order to make the refinery capable of producing fuel that complies with the United
3186 States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40
3187 C.F.R. Sec. 79.54.
- 3188 (3) "High cost infrastructure project" means a project:
3189 (a) (i) that expands or creates new industrial, mining, manufacturing, or agriculture
3190 activity in the state, not including a retail business;
3191 (ii) that involves new investment of at least \$50,000,000 in an existing industrial,
3192 mining, manufacturing, or agriculture entity, by the entity; or
3193 (iii) for the construction of a plant or other facility, including a fueling station, for the
3194 storage, production, or distribution of hydrogen fuel used for transportation, electricity

- 3195 generation, or industrial use;
- 3196 (b) that requires or is directly facilitated by infrastructure construction; and
- 3197 (c) for which the cost of infrastructure construction to the entity creating the project is
- 3198 greater than:
- 3199 (i) 10% of the total cost of the project; or
- 3200 (ii) \$10,000,000.
- 3201 (4) "Infrastructure" means:
- 3202 (a) an energy delivery project as defined in Section 63H-2-102;
- 3203 (b) a railroad as defined in Section 54-2-1;
- 3204 (c) a fuel standard compliance project;
- 3205 (d) a road improvement project;
- 3206 (e) a water self-supply project;
- 3207 (f) a water removal system project;
- 3208 (g) a solution-mined subsurface salt cavern; or
- 3209 (h) a project that is designed to:
- 3210 (i) increase the capacity for water delivery to a water user in the state; ~~or~~
- 3211 (ii) increase the capability of an existing water delivery system or related facility to
- 3212 deliver water to a water user in the state~~[-]; or~~
- 3213 (iii) a hydrogen fuel production or distribution project.
- 3214 (5) (a) "Infrastructure cost-burdened entity" means an applicant that enters into an
- 3215 agreement with the office that qualifies the applicant to receive a tax credit as provided in this
- 3216 part.
- 3217 (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as
- 3218 defined in Section 59-10-1402, of a person described in Subsection (5)(a).
- 3219 (6) "Infrastructure-related revenue" means an amount of tax revenue, for an entity
- 3220 creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high
- 3221 cost infrastructure project, under:
- 3222 (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- 3223 (b) Title 59, Chapter 10, Individual Income Tax Act; and
- 3224 (c) Title 59, Chapter 12, Sales and Use Tax Act.
- 3225 (7) "Office" means the Office of Energy Development created in Section 63M-4-401.

- 3226 (8) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.
- 3227 (9) "Tax credit certificate" means a certificate issued by the office to an infrastructure
- 3228 cost-burdened entity that:
- 3229 (a) lists the name of the infrastructure cost-burdened entity;
- 3230 (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
- 3231 (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure
- 3232 cost-burdened entity under this part; and
- 3233 (d) includes other information as determined by the office.
- 3234 **Section 10. Effective date.**
- 3235 (1) Except as provided in Subsections (2) and (3), this bill takes effect on July 1, 2021.
- 3236 (2) The changes to Sections 59-12-102 and 59-12-103 take effect on January 1, 2022.
- 3237 (3) The changes to the following sections take effect for a taxable year beginning on or
- 3238 after January 1, 2022:
- 3239 (a) Section 59-7-614;
- 3240 (b) Section 59-10-1106;
- 3241 (c) Section 63M-4-502; and
- 3242 (d) Section 63M-4-602.